LIBRARY
SUPREME COURT, U.S.
FILED
JAN 20 1971

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1258

UNITED AIRCRAFT CORPORATION, *Petitioner*,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JOSEPH C. WELLS
1225 Connecticut Avenue, N. W.
Washington, D. C.
Attorney for Petitioner

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

INDEX

	Page
Opinion Below	1
Jurisdiction	2
Question Presented	2
Statute Involved	3
Statement of the Case	3
Background	4
Employer Refusal to Furnish the Union with A List of Employee Addresses	10
Reasons for Granting Writ	11
Conclusion	18

CITATIONS

American Ship Building Company v. *NLRB*, 380 U.S. 300 (1965) 11, 15, 16
Garment Workers v. *NLRB*, 366 U.S. 731 (1961) 17
Hoban v. *United Aircraft Corporation*, 65 LRRM 2234 (1967) 9
Hoban v. *United Aircraft Corporation*, 264 F. Supp. 645, 62 LRRM 2691 (1966) 8
Lodges 1746, 743, IAM v. *NLRB*, 416 F.2d 922, 813 (D.C. Cir. 1969), cert. den., 90 S. Ct. 751 16
NLRB v. *Acme Industrial Co.*, 385 U.S. 432 (1967) .. 15
NLRB v. *Brown*, 380 U.S. 278 (1965) 15
NLRB v. *Insurance Agents International Union*, 361 U.S. 477 (1960) 11, 15
NLRB v. *Truitt Mfg. Co.*, 351 U.S. 149 (1956) 15
Prudential Insurance Company v. *NLRB*, 412 F.2d 77 (2d Cir. 1969), cert. den. 396 U.S. 928 ..11-12, 13, 14

Page

Standard Oil Company v. *NLRB*, 339 F.2d 659 (9th Cir. 1965) 11, 12

United Aircraft Corporation 134 NLRB 1632, 1634, 1635, 49 LRRM 1394 (1961) 6

United Aircraft Corporation, 134 NLRB 1632, 1633, 49 LRRM 1394 (1961) 5

United Aircraft Corporation v. *Lodge 1746, Lodge 743, District 91, I.A.M.*, 68 LRRM 2692, 2693 (Connecticut Superior Court, Hartford County, 1968) 5, 16

United Aircraft Corporation v. *NLRB*, — F.2d —, 75 LRRM 2692 1

United Aircraft Corporation v. *NLRB*, 181 NLRB No. 180 (1970) 2

United Aircraft Corporation v. *NLRB*, 416 F.2d 869 (D.C. Cir. 1969), cert. den., 90 S. Ct. 751 (App. p. 32a) 9, 16

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No.

UNITED AIRCRAFT CORPORATION, *Petitioner*,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

OPINIONS BELOW

This petition is filed by the United Aircraft Corporation, Petitioner, in support of its petition for a Writ of Certiorari to issue to the United States Court of Appeals for the Second Circuit to review the decision of that Court in *United Aircraft Corporation* v. *NLRB*, — F.2d —, 75 LRRM 2892 (not yet officially reported).

The opinion of the Court is reprinted in the appendix to this petition (App. pp. 2a-18a). That decision of

the Court enforced an order of the National Labor Relations Board in *United Aircraft Corporation*, 181 N.L.R.B. No. 180 (1970). The decision of the Board is reprinted in the appendix to this petition (App. pp. 10a-20a). The Board's decision adopted the decision of Trial Examiner Owsley Vose, which is also reprinted in the appendix to this petition (App. pp. 21a-42a).

JURISDICTION

The date of the opinion and order of the Court of Appeals was November 16, 1970 (App. p. 2a). The order of the Court of Appeals was stayed on December 22, 1970, at the request of petitioner pursuant to rule 41 (b) of the Federal Rules of Appellate Procedure pending this application for a Writ of Certiorari and this Court's disposition of the writ.

The statutory provision conferring jurisdiction on this Court to review the Court of Appeals decision is 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Whether an employer violates Section 8(a) (5) in declining to furnish to the Union the names and home addresses of the approximately 25,000 employees in the bargaining units involved in circumstances where (1) alternate methods of Union communication with employees exist, (2) the company had a good faith doubt of the Union's representative status at the time the request was made, and (3) there was a past history of Union directed violence at the homes of a substantial number of employees who had refused to join or who had abandoned a strike called by the Union.

STATUTE INVOLVED

The statute involved is Section 8(a)(1) and (5) of the National Labor Relations Act, 29 U.S.C. § 158 (a)(1) and (5), which provides:

"Sec. 8(a). It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of rights guaranteed in Section 7. . . .

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9(a).

STATEMENT OF THE CASE

United Aircraft Corporation has about 60,000 salaried and hourly paid employees at various plants in several states engaged in research and development and the manufacture of various products for use in the aerospace industry.

The Company's largest division, Pratt & Whitney, is principally occupied with aircraft and rocket engines. Its main plant is located at East Hartford, Connecticut, where about 16,000 hourly paid employees are employed and are covered by a labor agreement between it and Lodge 1746 of the International Association of Machinists. In addition to the East Hartford plant, the Pratt & Whitney division also maintains several other plants at other locations in Connecticut and Florida where most of the hourly paid employees comprise separate units. One such plant is located at Manchester, Connecticut, and its approximately 180 employees are covered by a labor agreement with IAM Lodge 1746. The unit at Southington, Connecticut is covered by a separate contract with Lodge 1746-A; the unit at Middletown, Connecti-

cut (about 1400 employees) is covered by a contract with IAM Lodge 700. The Company has other plants at North Haven, Connecticut and West Palm Beach, Florida, which are not involved in this proceeding. (App., pp. 23a-24a)

The Company's Hamilton Standard Division at one time was principally engaged in the manufacture of propellers for aircraft engines. Since the development of jet and rocket engines, however, its work has shifted to other items such as jet fuel controls, environmental controls for jet aircraft and space vehicles, space suits, electronic ground support equipment, etc. Hamilton's operations are mostly centered at Windsor Locks, Connecticut, where about 4,600 hourly paid workers constitute two separate bargaining units. Both of such units (one containing about 600 and the other about 4,000 employees) are covered by separate labor agreements with IAM Lodge 743 (App., p. 24a).

The Company's other operating divisions include The Sikorsky Division, The Norden Division, and Technology Center where various units of hourly paid workers are represented by the I.U.E., the UAW and the Teamsters. None of these divisions nor the unions representing their employees is directly involved in this case.

Background

In June of 1960, IAM and UAW local unions representing employees of the Pratt & Whitney Aircraft Division, the Hamilton Standard Division, and the Sikorsky Division in Connecticut and Florida engaged in a concerted strike against the Company.[1] As the

[1] Only the Southington plant represented by Lodge 1746-A refrained from striking.

Board noted in *United Aircraft Corporation*, 134 NLRB 1632, 1633, 49 LRRM 1284 (1961), the strike "was attended by mass picketing and violence", and in a proceeding initiated by the Board under Section 10(j) of the Act, the unions on June 16, 1960 entered into a stipulation whereby they agreed to halt their illegal activities (App., pp. 24a-25a).

While the mass picketing and violence of the unions at the picket lines subsided as a result of these proceedings, the stipulation proved to be no substantial deterrent to union directed violence and intimidation practiced surreptitiously away from the lines, particularly at the homes of employees who sought to work during the strike (App., p. 25a). As the Connecticut Superior Court stated in *United Aircraft Corporation* v. *Lodge 1746, Lodge 743, District 91*, I.A.M., 68 LRRM 2488, 2493 (Connecticut Superior Court, Hartford County-1968):

> "Following the entry of the stipulation in Court June 13, 1960, the threats, acts of intimidation, harassment by phone calls, physical damage to cars and property of nonstrikers continued. From the time the strike started on June 8th until the end of the strike August 11th the personnel director of the plaintiff corporation at the East Hartford plant received in excess of 1,000 complaints concerning such activities, a majority of them being received after June 16th, a date subsequent to the entry of the stipulation."

In the same opinion (at page 2494), the Court described the operation of union directed "night riders" at employees' homes as follows:

> ". . . As such they (the night riders) damaged automobiles of non-striking employees. They

> flooded the cellars of their houses, they burned their hedges, they threw paint bombs through their house windows. They tried to burn a barn behind a house where many non-strikers lived. They burned one of the non-striking employee's automobile . . ."

The end of the strike did not bring about a complete end of the union's warfare against the non-striking employees. As the Board noted in *United Aircraft Corporation*, 134 NLRB 1632, 1634, 1635, 49 LRRM, 1384 (1961):

> ". . . at the conclusion of the strike and after the strike settlement was reached, a local newspaper published a letter which had been signed by the Union's vice president. This letter stated in part: *'-the cry "scabbie" will ring loud and clear throughout Connecticut for many years to come. It will follow some employees to their graves. For them the strike is just beginning'* (4) in October 1969 the Union's vice president prepared a list of approximately 150 employees which contained the following heading: 'This list is furnished you courtesy of 963 strike committee. These scabs crossed the picket lines between June 8 and August 9.' It appears that some 30 to 40 copies were distributed to plant employees; . . ." (Emphasis added)

In 1961 Lodges 743 and 1746 filed a suit against the Company for specific performance and damages involving the Company's alleged breach of the written agreements which ended the 1960 strike in the U.S. District Court for the District of Connecticut (App. p. 20). In this action the unions alleged that the Company had breached the agreements by failing to recall about 3,800 strikers to jobs they had held before the

strike (App., p. 26a). At the same time, the unions filed charges with the General Counsel of the Board alleging that the Company had discriminated against substantially the same 3,800 strikers by failing to restore them to their pre-strike jobs, and had refused to bargain with the unions by failing to furnish certain employee data and information to the unions (App., p. 26a). On the basis of these charges, the General Counsel of the Board issued a complaint in February of 1963 alleging that the company (Pratt & Whitney and Hamilton Standard Divisions) had violated Sections 8(a)(1) and (3) of the Act by failing at the end of the strike to restore about 3,800 strikers to their pre-strike jobs and had violated Section 8(a)(1) and (5) of the Act by failing to provide the unions with information and data concerning its employees (App., pp. 26a-27a).

A hearing on this complaint commenced on May 16, 1963, and continued intermittently until June 11, 1968. During this period, the General Counsel frequently amended his original complaint to include events occurring during the hearing. Thus, in 1964, the unions requested that the Company furnish them with copies of virtually all of its personnel records for each employee in the several bargaining units represented by the IAM unions in Connecticut. When the Company declined to do more than make such records available to the unions for their inspection and copying unless the unions would agree to pay the cost of reproducing such copies, the General Counsel amended the complaint to allege that the Company's action violated Section 8(a)(5) of the Act, and, forthwith petitioned the United States District Court for the District of Connecticut for an injunction compelling the company to provide copies of its records

without any compensation from the union (App., p. 27a).[2]

In the fall of 1965—at the invitation and instigation of the unions which had been involved in the strike—the Company entered into negotiations to obtain an amicable settlement of the then pending litigation, and new three-year labor contracts to replace those about to expire (App., p. 28a).

In March of 1966, however, after months of negotiations, the unions deliberately precluded any possibility of agreement resulting therefrom by inserting conditions far in excess of anything theretofore proposed (App., pp. 28a-29a). The Company thereupon lawfully questioned the unions' majority status and refused to negotiate further with the unions unless they could demonstrate by a Board election that they in fact possessed such majority status (App., p. 29a).

The unions responded by a Section 8(a)(5) charge, and the General Counsel with another complaint and a petition to the United States District Court for an injunction to compel the Company to continue its recognition of the unions. In this instance the District Court granted the injunction requested,[3] and,

---

[2] This case was docketed in the District Court as Case No. 10,535, and is still pending before the Court. It was not heard in 1964 because of a stipulation entered into with the Court's approval whereby the Company undertook to supply the documents and records upon the unions' posting of a bond insuring payment of the cost in the event that it was eventually determined that the Company was not required as a matter of law to furnish the documents to the unions at its own expense.

[3] The Court's action is reported in *Hoban* v. *United Aircraft Corporation*, 264 F. Supp. 645, 63 LRRM 2081 (1966). After issuing the temporary injunction, the parties met pursuant to its terms and promptly executed new agreements. The Court

as a consequence, the Company in September 1966 entered into new contracts with the unions (App., pp. 29a-30a). A hearing before a trial examiner ensued on the General Counsel's complaint and on November 27, 1967, the Board issued its decision (168 NLRB No. 66, 67 LRRM 1010 (1967)) finding the Company's action in 1966 violated Section 8(a)(5) of the Act and ordering the Company to bargain with the unions (App., p. 31a).

The Company promptly filed a petition to review the Board's order in the United States Court of Appeals for the Second Circuit, and the unions filed a petition to review in the Court of Appeals for the District of Columbia. The latter Court decided the case on May 29, 1969, holding that the Company's action in 1966 had not violated the Act, and setting aside the Board's order of November 27, 1967. See *United Aircraft Corporation* v. *NLRB*, 416 F.2d 809 (D.C. Cir. 1969), cert. den., 90 S. Ct. 751 (App., p. 32a).

From August 5, 1966, through May 29, 1969, therefore, the company was compelled to negotiate and eventually enter into contracts with Lodges 1746 and 743 by the erroneously issued District Court order of August 5, 1966, and the subsequently overruled Board order dated November 27, 1967. The latest of such contracts were made effective for three years beginning on December 1, 1968, in the case of Pratt & Whitney

---

thereupon *sua sponte* dissolved the injunction "in view of the company-respondent's full compliance with the Court's temporary injunction order issued August 5, 1966, and because new collective bargaining contracts have since been negotiated and executed which reinstate satisfactory lawful labor relations beyond the date of the Court's original order;". See also *Hoban* v. *United Aircraft Corporation*, 66 LRRM 2134, (1967) footnote 3.

and Lodge 1746, and on April 21, 1969, in the case of Hamilton Standard and Lodge 743.

The events directly involved in the instant proceeding occurred on or about September 30, 1968, during the aforementioned period when the company's recognition of the unions came about involuntarily through judicial compulsion.

Employer's Refusal to Furnish the Union with a List of Employee Addresses

On September 19, 1968, the union submitted a request to the Company for a list of names and home addresses of all bargaining unit employees. The Company officially denied the request on September 30, 1968, on the ground that it would adhere to its long-standing policy of refusing publication of employees' home addresses in the interest of the employees' right to privacy in their homes. However, the Company, in an attempt to accommodate the union's expressed desire to communicate efficiently with all bargaining unit employees, offered assistance to the union in communicating by mail with all employees in matters related to the collective bargaining negotiations. Specifically the Company offered the union use of its mailing facilities (addressograph machine) to facilitate the efficient mailing of union material to all employees. In November 1968, the union took advantage of the Company's offer and sent out a letter to all employees addressed to "All U.A.C. employees who are not yet Union members" (App., pp. 37a-38a).

Further, the Company affirmatively offered and Lodge 743 accepted and used the Company's "literature distribution racks" to facilitate handbilling and leafletting in inclement weather or where other factors precluded efficient manual distribution. In this same

vein, the Company has had a long history of allowing the union access to the Company bulletin board for communication purposes. Finally, the Company as a matter of policy makes available to the union information concerning the departmental location of all employees for purposes of union steward communication. The Company thus offers the union virtual command over every channel that the Company has access to in communicating with bargaining unit employees (App. pp. 43a-46a).

In addition to the above-cited Company offers, which allow the union extensive access to communication channels with all employees, the unions have their own traditional means of communication, i.e., union newspapers, and union steward representation.

REASONS FOR GRANTING THE WRIT

The decision of the Court of Appeals in this case constitutes a decision on an important question of federal law which has not been, but should be, settled by this Court. In addition, the decision of the Court of Appeals is in conflict with the judicial philosophy of this Court that the National Labor Relations Act does not give the Board a broad charter to attempt to equalize the respective economic powers of labor and management. *American Ship Building Company* v. *NLRB*, 380 U.S. 300 (1965). *NLRB* v. *Insurance Agents International Union*, 361 U.S. 477 (1959).

The instant case is the third in a recent line of Board decisions enforced by Courts of Appeal, in which an employer has been compelled to turn over to a union a list of the names and home addresses of employees in the bargaining units. *Standard Oil Company* v. *NLRB*, 399 F.2d 639 (9th Cir. 1968); *Prudential In-*

surance Company v. *NLRB*, 412 F.2d 77 (2d Cir. 1969), cert. den. 396 U.S. 928.

In the *Standard Oil Company* case there were some 1,500 employees in the bargaining unit. The union requested the names and home addresses of employees in the unit in order to counter what it termed the "Company propaganda by mass mailing." The Board, with Court approval, found that "in fact the Union had no way of communicating with the non-member employees . . . ", and thus ordered the Company to give the Union the names and home addresses of the employees involved.

In the *Prudential Insurance Company* case, the Second Circuit Court of Appeals, with Judge Friendly dissenting, enforced a Board order requiring the Company to give the Union the names and home addresses of some 16,795 employees in a bargaining unit extending over 34 states. The Court noted that the Union involved was "relatively small," and that the Union's alternative methods of communicating with employees were unsatisfactory. The Court specifically denied that it was "sanctioning a *per se rule*" requiring companies under all circumstances to provide the Union with such information 412 F.2d at 83.

In the present case the Court again enforced the Board's order that the Company turn over to the Union the names and home addresses of bargaining unit employees tracking the approach of the majority in the *Prudential* case. The Court summarily dismissed the available alternative methods of communication by the Union with the employees as being individually and collectively inadequate to achieve the ideal of such communications which the Board has constructed and the Court has endorsed. In fact, the

mechanical application of the *Prudential* case to the quite different facts of the present case clearly suggests that the Second Circuit has now in fact adopted a *per se* rule in requiring employers to give unions lists of the names and home addresses of their employees regardless of the circumstances of the case.

This conclusion becomes inescapable when the considerable differences between the two cases are analyzed.

1. In *Prudential* the Court found that the unit of employees was "extraordinary in every respect", including the fact that it covered nearly 17,000 employees in 34 states, 412 F. 2d at 79. In the present case the approximately 25,000 employees are nearly all located in the State of Connecticut.

2. In *Prudential* the Court found that handbilling was impractical because of the fact that some 897 individual offices were involved and that most of those offices were in office buildings having many other tenants and no separate entrance for Prudential employees. In the present case there are only six plants involved (East Hartford, Manchester, Southington, Windsor Locks, Broad Brook and Middletown.)

3. In the present case the Company offered to let the Union use its distribution racks in the plants, whereas this factor was not involved at all in the *Prudential* case.

4. In the present case the record showed some 85-100 "shop stewards" and about 400 "union stewards" located at strategic areas thoughout the plants and a relatively stationary employee complement. In the *Prudential* case the stewards or "grievance committees" were under a much more severe limitation in

communicating with employees because of the geographical spread of the unit and the fact that the employees involved in that case rarely worked in the offices and were traveling about soliciting insurance.

5. In the *Prudential* case the bulletin boards were deemed to be an inadequate method of communication because the employees were not stationary and rarely had occasion to view the bulletin boards. In the present case, of course, the employees work primarily in the six plants involved.

6. In the present case the Company offered to let the Union use its mailing facilities to communicate with employees in matters concerning contract negotiations. Such an offer was not involved in the *Prudential* case.

7. In the *Prudential* case the Court contrasted the "extensiveness of the unit" to the size of the Union, which it found was "relatively small." In the present case the Union involved is the fourth largest Union in the United States, having a reported membership of 903,000 employees.[4]

In glossing over these substantial differences it becomes evident that the Second Circuit has elevated the holding of the *Prudential* case into a *per se* rule requiring the disclosure of names and home addresses to the Union upon request.

Such a rule is at variance with the general construction of the Act by this Court. While this Court has held that there is a "general obligation of an employer to provide information that is needed by the bargain-

---

[4] BNA Labor Relations Yearbook, 1969, p. 825.

ing representative for the performance of its duties,"[5] it has done so in circumstances where the Union has made a specific demand for information necessary to process a grievance (*NLRB* v. *Acme Industrial Co.*, 385 U.S. 432 (1967)) or to rebut a specific contention made by the Company in bargaining (*NLRB* v. *Truitt Mfg. Co.*, 351 U.S. 149 (1956)). To leap from this proposition to the conclusion that a Union is entitled upon request to a list of the names and home addresses of employees is wholly unwarranted.

No provision of the Act assures to Unions that their communication with unit employees should be ideal. Moreover, this Court in *American Ship Building Co.* v. *NLRB*, 380 U.S. 300 (1965) in a different context had occasion to remind the Board that

> "Sections 8 (a)(1) and (3) do not give the Board a general authority to assess the relative economic power of the adversaries in the bargaining process and to deny weapons to one party or the other because of its assessment of that party's bargaining power." 380 U.S. at 317

See also *NLRB* v. *Brown*, 380 U.S. 278 (1965), and *NLRB* v. *Insurance Agents International Union*, 361 U.S. 477, 497-98.

Just as the interference and discrimination prohibitions of the Act should not be construed by the Board to aid one side or the other in its bargaining power, the good faith bargaining requirement of Section 8 (a)(5) should not be utilized as a device for achieving what the Board considers to be an ideal state of communication between the Union and the unit employees, thereby increasing the Union's economic power.

---

[5] *NLRB* v. *Acme Industrial Co.*, 385 U.S. 432 (1967).

The holding of the Court of Appeals below is even more egregious when it is considered that even the Court found that:

> "The Company's initial refusal [to provide the Union the names and addresses of employes] was not an unfair labor practice." (App., p. 10a)

The Court's reason for this finding was that when the request was initially made and rejected in September of 1968 "the coereed 1966 contracts were still in effect." (App., p. 10a). This referred to the fact, as shown in the Statement of the Case, that the Company had questioned the Union's majority status in 1966, that the Board challenged the Company action as being in bad faith and obtained ancillary injunctive relief in the federal court requiring the Company to continue to bargain in good faith with the Union. The product of that injunction was the 1966 contracts. The Board decision finding that the Company's withdrawal of recognition from the Unions was in bad faith, was not enforced by the United States Court of Appeals for the District of Columbia Circuit, which found that "the Company might well have entertained a reasonably based doubt as to the Union's majority status." *Lodges 1746, 743, IAM* v. *NLRB*, 416 F. 2d 809, 813 (D.C. Cir. 1969), cert. den., 90 S. Ct. 751.

In the face of these facts the Court of Appeals in the present case concluded that the Union's request for names and home addresses was an ongoing one, and that the Company's refusal to provide such information after the 1968-1969 negotiations and agreements was an unfair labor practice because:

> "The Company failed to charge such 'taint' when the unions claimed in the late 1968 and early 1969

> negotiations that their dues checkoff cards established their majority status; it rejected the unions' offer to prove their majority status in an election; it accepted in the 1968 and 1969 contracts the unconditional and unequivocal recognition of the unions as the exclusive bargaining agent; and it yielded to the unions' demand that the 'savings clause' be omitted from the new contracts, thereby knowingly waiving its option to terminate in the event of a favorable decision in the District of Columbia case. All of these actions indicate that in the 1968 and 1969 negotiations the Company accepted the fact that the unions were the exclusive bargaining representatives and that their majority was not tainted." (App., pp. 11a-12a).

The Court's interpretation of these events is wholly mistaken. The Company in late 1968 and early 1969 was facing unions which had been unlawfully assisted since the improvident injunction of August 5, 1966—a period of over two years. In concrete terms this meant a two year period when these unions were protected from any rival labor organization and enjoyed the benefits of a coerced recognition, such as two years of checked off dues, paid stewards and access to employee information.

The Company's actions in the 1968 and 1969 negotiations were merely a recognition that the assistance granted these unions over this period of time had been effective in consolidating the unions' power. *Cf. Garment Workers* v. *NLRB*, 366 U.S. 731 (1961). Nowhere in these agreements or negotiations did the Company admit that the unions' apparent majority status was untainted by the above described events of 1966-1968.

A final circumstance making the union's demand for home addresses unjustified in this case was the past history of union directed violence against the homes of persons who chose to work during the 1960 strike. The decision of the Court of Appeals brushes off this past history finding that:

> "Although there was evidence of violence in the past, it took place ten years ago and there has been no evidence of harassment since that time; the threatening statements were merely personal and not attributable to the unions; and no employee testified to present fear of violence." (App., p. 18a).

These comments demonstrate a total insensitivity to the grossness and breadth of the union's misconduct as set out so clearly in *United Aircraft Corp.* v. *Lodge 1746 & Lodge 743, District 91 IAM*, 68 LRRM 2488 (Conn. Sup. Ct. 1968). The legitimate fears engendered by these acts were not dissipated by the passage of a decade. Nor would any employee who valued his own and his family's safety publicly testify regarding his current fears of union misconduct should the unions be given the home addresses of the many current employees who crossed the unions' picket lines in 1960.

CONCLUSION

The importance of the question presented is the approval by the Court of Appeals to the National Labor Relations Board's efforts to seek an equality or parity in the ability of a union and a company to communicate with employees and thus to affect "the relative economic power of the adversaries in the bargaining process" *America Ship Building Co.* v. *NLRB*, 380 U.S. 300 (1965). The Act does not give the Board

such a broad charter, particularly in the above described circumstances of this case.

Respectfully submitted,

JOSEPH C. WELLS
1225 Connecticut Avenue, N. W.
Washington, D. C.
Attorney for Petitioner

SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
JAN 20 1971
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. ~~1258~~ 1258

UNITED AIRCRAFT CORPORATION, *Petitioner*,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

JOSEPH C. WELLS
1225 Connecticut Avenue, N.W.
Washington, D.C. 20036
Attorney for Petitioner

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

TABLE OF CONTENTS

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Page

A. Opinion of the United States Court of Appeals for the Second Circuit 2a

B. Decision and Order of the National Labor Relations Board 19a

C. Decision of Trial Examiner 21a

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. ———

UNITED AIRCRAFT CORPORATION, *Petitioner*,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*.

APPENDIX TO
PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

APPENDIX A

Opinion of the United States Court of Appeals for the Second Circuit

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Nos. 167 and 168—September Term, 1970.

(Argued October 14, 1970 Decided November 16, 1970.)
Docket Nos. 34798 and 34928

UNITED AIRCRAFT CORPORATION, *Petitioner*,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*,

DISTRICT 91, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, *Intervenor*.

Before:

LUMBARD, *Chief Judge*,
KAUFMAN, *Circuit Judge* and CLARK, *Associate Justice*.*

Petition of the United Aircraft Corporation to review and set aside a decision and order of the National Labor Relations Board, holding that United Aircraft violated section 8(a)(5) and (1) of the National Labor Relations Act by refusing to furnish the unions involved with the names and addresses of all bargaining unit employees, and directing United Aircraft to furnish the unions with

---

* United States Supreme Court, retired, sitting by designation.

that information; and cross-petition of the Board for enforcement of its order.

Petition to review denied and Board's order enforced.

JOSEPH C. WELLS, Washington, D. C., for *petitioner*.

ELLIOTT MOORE, Attorney (Arnold Ordman, General Counsel, Dominick L. Manoli, Associate General Counsel, Marcel Mallet-Prevost, Assistant General Counsel, and Stanley J. Brown, Attorney, on the brief), *for respondent*.

MOZART G. RATNER, Washington, D. C. (Plato E. Papps, on the brief), *for intervenor*.

LUMBARD, *Chief Judge:*

We are called upon in this case to decide whether United Aircraft Corporation violated section 8(a)(5) and (1) of the National Labor Relations Act by refusing to furnish the unions involved with a list of the names and addresses of all employees represented by the unions in six of the Company's plants in Connecticut.

United Aircraft Corporation is engaged in the manufacture of aircraft engines and parts, helicopters, and electronic devices. Its Pratt and Whitney Division operates plants in East Hartford, Manchester, Southington, and Middletown; and its Hamilton Standard Division operates two plants in Windsor Locks. Lodges 1746, 1746A, 700 and 743 are all local Lodges of the International Association of Machinists and Aerospace Workers, AFL-CIO, affiliated with District 91, I.A.M., the charging party in the instant case, which coordinates their labor relations programs. All of these Lodges have for some years been

recognized as exclusive bargaining agents in contracts covering the production and maintenance employees at the various plants of the Company. Lodge 1746 represents units of these employees at the East Hartford and Manchester plants, Lodge 700 represents these employees at the Middletown plant, Lodge 1746A represents these employees at the Southington plant, and Lodge 743 represents these employees at Windsor Locks.

On July 3, 1969, the unions filed a charge with the National Labor Relations Board alleging that the Company had violated section 8(a)(5) and (1) of the Act by its refusal to furnish the unions with the home addresses of the approximately 25,000 employees represented by the unions in the six plants. The Company agreed that it had refused to furnish the unions with the employees' home addresses, but contended that under the circumstances its refusal did not violate the Act. More specifically, the Company contended that such information was neither necessary nor relevant to the union's proper performance of their statutory duties and, further, that in the case of Lodges 1746, 743, and 700, the unions were legally entitled to recognition as the exclusive representatives of the employees involved.

The Board's trial examiner found to the contrary—holding, in substance, that the home addresses of the unit employees were necessary and relevant to the unions' function as bargaining agents, and that—in the case of Local Unions 1746, 743, and 700—the unions were legally entitled to recognition as the exclusive bargaining representative of the employees in the units where they claimed such status. By decision and order dated April 2, 1970, the Board adopted the findings and conclusions of the trial examiner. Accordingly, the Board ordered the Company to cease and desist from refusing to furnish the union with the home addresses of all the employees in their respective collective bargaining units, and promptly to furnish the union with those addresses.

United Aircraft now petitions this court to review and set aside the Board's order, and the Board cross-petitions for enforcement. The unions have intervened on the side of the Board. For the reasons set forth below, we deny United Aircraft's petition for review and grant the Board's cross-petition for enforcement.

I.

In the summer of 1960, after a stalemate in negotiations between the Company and Lodges 1746 and 743 for new contracts, most of the employees represented by those Lodges went on strike. That strike was accompanied by violence, threats, and physical damage to the non-strikers, particularly, at their homes. In August 1960, the Company and the unions finally agreed on the terms of new contracts, and a strike settlement was reached.

In the fall of 1965, the Company and the unions entered into negotiations to settle pending litigation and to enter into new three-year contracts to replace those about to expire. In March 1966, the Company questioned the unions' majority status and refused to negotiate further unless the unions could demonstrate their majority status by a Board election. The unions responded with a charge of a section 8(a)(5) violation, and the Board's General Counsel filed both a complaint before the Board and a petition for an injunction in the United States District Court in Connecticut.

On August 5, 1966, the district court granted an injunction requiring the Company to recognize and bargain with the unions. As a consequence of the court's order, the Company entered into new two-year contracts with the unions. Those contracts contained a "savings clause" to the effect that if the Company was ultimately found not to be obligated to bargain with the unions, it could terminate. The district court then dissolved its order. In October 1966, Trial Examiner Ricci held a hearing on the

General Counsel's complaint and found that by withdrawing recognition from unions in March 1966 and refusing to bargain, the Company had violated section 8(a)(1) and (5); he ordered the Company to bargain with the unions.

On November 27, 1967, the Board issued a decision upholding the trial examiner's findings. That decision was promptly appealed by all parties to the United States Court of Appeals for the District of Columbia Circuit.

On September 29, 1968, the unions requested the Company to give them a list of the names and addresses of all bargaining unit employees, and on September 30, the Company denied the unions' request. Nevertheless, on October 15, 1968, the Company sent a letter to the unions proposing that when a local union desires to write letters to all employees on matters related to contract negotiations, the local deliver the sealed envelopes to the Company and the Company would, by addressograph equipment, put the names and addresses on the envelopes and mail them. The Company stated, however, that this offer was subject to the availability of the addressograph equipment and the Company had first call on the equipment. Nevertheless, the next month, the unions took advantage of the Company's offer and sent letters to all employees by this means.

In November 1968, the Company and the unions entered into negotiations for the Pratt and Whitney Division for new contracts to succeed the ones entered into in 1966. The Company again questioned the unions' majority status; and the unions agreed to submit sufficient dues check-off cards to constitute a majority and, if that was not enough, to have a Board-conducted election. The Company rejected this offer, proposing that they continue to negotiate and that any agreement reached contain the "savings clause" giving it the option to terminate the contract in the event the Court of Appeals for the District of Columbia should reverse the Board's decision and find

that the Company had no obligation to bargain with the unions in March 1966. The Union, however, opposed inclusion of the "savings clause" and asked the Company "unconditionally and unequivocally" to recognize the unions as the exclusive bargaining representatives of the employees involved. Finally, the Company signed three-year contracts containing clauses of unconditional exclusive recognition of the unions and omitting the "savings clause." Both parties agreed, however, that by their actions they were not waiving any legal position previously taken.

In March 1969, the Company and the unions began negotiations for new contracts for the Hamilton Standard Division, but this time the Company did not question the union's majority.

On May 29, 1969, while those negotiations were proceeding, the Court of Appeals for the District of Columbia Circuit denied enforcement of the Board's order of November 27, 1967, and found that in March 1966 the Company had a reasonably grounded good-faith doubt as to the union's majority and hence had not violated the Act. *Lodges 1746 and 746, Int. Ass'n of Mach. and Aero. Workers* v. *N.L.R.B.*, 416 F.2d 809 (D.C. Cir. 1969). But on July 1, 1969, despite this decision, the Company signed new contracts for its Hamilton Standard Division, containing exclusive recognition clauses and omitting the "savings clause." All contracts covering both the Hamilton Standard and Pratt and Whitney Divisions contained provisions for dues checkoff authorizations, but no other form of union security.

II.

The Company employs large numbers of people whose homes are dispersed over a wide geographical area. Of the 17,000 employees at the East Hartford and Manchester plans, only a little over 6,000 live in towns closer

than seven miles from the plant. The rest live in some 118 different towns in Connecticut, in 27 towns in Massachusetts, and in various places in other states. Similarly, only 641 of the 3,000 employees in the Southington plant and 693 of the 1,700 employees in the Middletown plant live in those towns. The rest are scattered over a radius of more than 40 miles from the plants. The same wide dispersion can be found among the 5,000 employees at the Windsor Locks plants.

When the Company has had serious labor relations problems in the past, it has resorted to the mails to reach the employees with its point of view. Thus, the Company has sent several letters to its employees pertaining to collective-bargaining contracts proposals. After negotiations with Lodges 1746 and 743 broke down in 1966, it mailed a series of letters to the employees at the affected plants, explaining and seeking to justify its action. Finally, in November 1968, after refusing the union's request for the home addresses of its employees, the Company utilized the mails to explain its position on the refusal to the employees.

The unions, too, use the mails to communicate with employees, but they can only reach those of their members for whom they have up-to-date addresses. Moreover, they have no record whatever of the addresses of the roughly 10,000 other unit employees who are not union members. The unions have found that, under these circumstances, the most feasible means of communication with all employees, members as well as nonmembers, is through handbills which are distributed to the employees as they enter the plants at the beginning of the shifts. During 1968, the unions distributed handbills on about 45 or 50 occasions.

In 1964 the president of Lodge 1746 requested the Company to permit its handbill distributors (who are usually Company employees) inside the plant to avoid bad weather. The Company refused, but offered to permit the Union to

use its racks for the handbills, providing no conflicting use of the racks was planned. This offer was explored and Lodge 743 did use the racks at one of the Windsor Locks plants for some time. But the other Lodges, after ascertaining that the racks would only be open at the end of the shifts and that advance notice was required to avoid conflicts over the use of the racks, declined the Company's offer.

The collective-bargaining contracts obligate the Company to make space available on its bulletin boards for the posting of union notices, but they limit the subject matter of the notices which can be posted, and prior approval by a Company official is required.

The unions' access to employees at the plants through shop stewards and union stewards is severely limited by the strict enforcement of the Company's non-solicitation rule and its ban on solicitation of employees for union membership or dues conducted upon the premises of the Company during all paid time, whether or not the employee is working. Thus, the unions' stewards have the opportunity to discuss union matters with the employees only before and after work and during lunch periods; and because the employees have thirty-minute lunch breaks which are staggered every fifteen minutes, the opportunities for conversation between stewards and employees are further limited.

It was in light of all these circumstances that the unions requested the Company in September 1968 to furnish them with the names and addresses of all members of the bargaining units which they respectively represented. After the Company refused to do so, the unions filed an unfair labor practice charge with the Board's General Counsel; and on July 3, 1969, the General Counsel filed a complaint alleging that the Company's action had violated § 8(a)(5) and (1) of the Act. On November 28, 1969, Trial Examiner Vose found that the Company had so violated the Act, and

on April 2, 1970, the Board upheld the trial examiner's findings and conclusions and ordered the Company to furnish the unions with the addresses.

III.

The Company's first claim on this appeal is that it had no obligation to bargain with the unions so as to require it to give the unions the employees' addresses, because its status as exclusive bargaining representative of the employees was due to the coercion and taint of the district court's injunction and the Board's decision, both of which rested on a finding later reversed by the District of Columbia Court of Appeals. The trial examiner found that the Company's 1966 grant of recognition to the unions and the consequent contracts were indeed attributable to the compulsion of the court's injunction. Hence, since the unions' initial request for addresses and the Company's refusal to provide them came in September 1968, while the coerced 1966 contracts were still in effect and before the new negotiations began, the Company's initial refusal was not an unfair labor practice. But, as the trial examiner correctly found, the unions' request was an ongoing one and the Company's grant of recognition in the 1968 negotiation was not coerced. We hold therefore that the Company's continuing refusal to provide addresses after having been given proof in the 1968 negotiations of the unions' majority status cannot be justified by the coercion of the prior contract.

The trial examiner found that the unions in the various plants acquired majority status at least by the last day of the month during which the total number of dues checkoff cards furnished to the Company by the particular lodge reached fifty percent of the employees. These dates were, for the various plants, October 31, 1968, November 30, 1968, and December 31, 1968. This finding is supported by substantial evidence in the record, and the Company does not dispute it. Rather, the Company claims (1) that its

grant of recognition to the unions during the 1968 negotiations was directly coerced by the Board's 1967 decision which was then in effect but which was later found by the District of Columbia Court of Appeals to be incorrect, and (2) that if the unions had gained a majority by the time of the 1968 negotiations, the Company still had no duty to recognize them or to bargain with them concerning the address lists, because that majority was obtained only through the unwarranted assistance given to the unions by the district court and the Board.[1] We reject both of these contentions.

The Company's argument that its 1968 grant of recognition was coerced by the Board's 1967 decision has no merit, for, as the Company itself concedes, the unions had gained a majority by late 1968 and it was the Company's knowledge of that majority, as evidenced by the dues checkoff cards in its hands, that led it to enter into the 1968 negotiations.

The Company is estopped from raising its second argument—that the unions' majority was a result of the court's and the Board's unlawful assistance. The Company failed to charge such "taint" when the unions claimed in the late 1968 and early 1969 negotiations that their dues checkoff cards established their majority status; it rejected the unions' offer to prove their majority in an election; it accepted in the 1968 and 1969 contracts the unconditional and unequivocal recognition of the unions as the exclusive bargaining agent; and it yielded to the unions' demand that the "savings clause" be omitted from the new contracts, thereby knowingly waiving its option to terminate in the event of a favorable decision in the District of Columbia case. All of these actions indicate that in the 1968 and 1969 negotiations the Company accepted the fact that

[1] The Company's argument does not apply to the Southington plant where it has never questioned the particular Lodge's majority.

the unions were the exclusive bargaining representatives and that their majority was not tainted. Moreover, when the Company signed a new contract with Lodge 743 at the Hamilton Standard Division on July 1, 1969, it already knew of the District of Columbia Circuit's May decision, and it nevertheless accepted the omission of the "savings clause" and the inclusion of the clause granting unconditional recognition to the union as exclusive bargaining representative. If a "taint" charge was to be made at all, it surely should have been made at least at that time. To permit an employer to save his doubts for use at his convenience, as the Company here seeks to do, could subvert the bargaining process and the policies of the Act.

Furthermore, the Company's assertion, if accepted, would render unlawful and unenforceable all the 1968 and 1969 contracts between the Company and the unions; and the Company itself has not only not disavowed or sought to terminate those contracts even after the District of Columbia decision, but has insisted that they are valid and in force. Thus the Company's argument of taint seems to us to be a make-weight, which it wishes to use in this case to escape the enforcement of its obligation to furnish addresses, while, at the same time, it refuses to accept all the consequences of its claim—that is, that the contracts are unenforceable for all other purposes as well.

IV.

The Company's second claim is that the record evidence fails to establish the "necessity" or "relevance" of providing the unions with the home addresses of employees. We reject that claim.

It is, of course, well settled that the duty to bargain in good faith imposed upon the employer by section 8(a)(5) includes an obligation to provide the employees' bargaining representative with information that is necessary and relevant to the proper performance of its duties, including

the effective administration of the collective bargaining agreement in force. *N.L.R.B.* v. *Acme Industrial Co.*, 385 U.S. 432 (1967); *N.L.R.B.* v. *Truitt Mfg. Co.*, 351 U.S. 149 (1956); *Fafnir Bearing Co.* v. *N.L.R.B.*, 362 F.2d 716 (2d Cir. 1966). We held in *Prudential Insurance Company of America* v. *N.L.R.B.*, 412 F.2d 77 (2d Cir. 1969), that the names and home addresses of all bargaining unit employees constituted, in the circumstances of that case, information that was necessary and relevant to the proper performance of the unions' duties. We stated that since a union is under a statutory obligation to represent nonmember employees, as well as members, the union must be able to communicate with all employees. We found that in that case the names and addresses of all bargaining unit employees were vital to such communication, and hence we required the employer to furnish the union with those names and addresses. See *Standard Oil Company of California* v. *N.L.R.B.*, 399 F.2d 639 (9th Cir. 1968), where the Ninth Circuit came to the same conclusion on facts very similar to those in the instant case.[2] See also *Excelsior Underwear, Inc.*, 156 N.L.R.B. 1236 (1966); and *N.L.R.B.* v. *Wyman-Gordon Co.*, 384 U.S. 759 (1969).

In this case, the trial examiner found that addresses were both necessary and relevant to the unions' performance of its duties, and there is substantial evidence in the record to support his findings.

---

[2] In both situations union membership included only a small majority; in both there was no union security clause in the contract; in both the Company had practiced anti-union activity and the union had the need to counteract it; in both the homes of the employees were scattered over a wide area (here even more than in *Standard Oil*); and in both the alternative means of communication were found to be inadequate. In *Standard Oil*, the court upheld the Board's conclusion that the furnishing of employee addresses was relevant and necessary to the union's performance of its responsibilities in collective bargaining and contract administration, and it required that the employer furnish the requested list of addresses.

A. *Necessity*

In view of the wide dispersal of employee homes, it is clear that the unions need an effective means of communication. The severity of the problem is increased by the relatively low percentage of union membership, which limits both the effectiveness of the intraunion modes of communication and the reliability of the membership as a representative sample of employee sentiment on a particular topic. We reject the Company's contention that the existing means of communication—handbilling, the use of company distribution racks, bulletin boards, shop stewards and union stewards, and the Company's offer to mail union communications to the employees' home addresses—are adequate to fulfill union functions.

1. Handbilling. The union is able to hand leaflets to employees as they come and go from work. But as we stated in *N.L.R.B.* v. *United Aircraft Corp.*, 324 F.2d 128, 130 (2d Cir.), cert. denied, 376 U.S. 951 (1963). "Sidewalks and street corners are subject to the vicissitudes of climate and often force solicitation at awkward times, as when employees are hurrying to and from work." Where, as here, the unions are attempting to reach over 20,000 employees at six plants, the logistical problems of handbilling are overwhelming. The union needs enough handbillers at the many plant entrances with enough flyers for that particular entrance. Since the Company does not allow non-employee handbillers at the inner gate locations most suitable for this activity, the unions must use employees, who have to stop distribution in time to get to work. Hence, latecomers are missed, as are all employees who work irregular hours or are absent on that date. Finally, since handbilling is necessarily done at shift changes when great numbers of employees are entering and leaving the plants, it is inevitable that many people are missed.

2. Distribution Racks. The Company's offer to open up its distribution racks to union literature was subject to three conditions: that advance notice would be re-

quired when the racks were to be used, that they could be used only when the Company had no use for them, and that they would be locked until the end of the shift. The first two conditions clearly prevent the unions from relying on these racks in an emergency, and the latter condition, which prevents distribution until the employees are leaving the plant, renders the method impractical. The unions have found that the beginning of the shift is the best time for distribution, since employees are more likely to take a flyer; in addition, they can read the flyer at lunch break. After work, employees are more likely to be in too much of a hurry to stop for leaflets.

3. Bulletin Boards. The collective-bargaining agreements severely limit the subject matter of the notices that may be posted on bulletin boards and require prior approval by a Company official. Twice in a short period before the hearing in this case, the Company refused to post a notice tendered by the unions. On the first occasion the Company took the position that a notice concerning a "golf league" was "recreational" rather than "social" and hence not permitted by the agreement. On a second occasion, the Company refused to post notices concerning shop steward elections, a subject expressly included in the contract, assertedly because the signs were too large and because they contained small maps of the plants which allegedly created security problems. Although the union offered to block out the maps, the Company still refused either to post the notices or to arbitrate the dispute. Moreover, as the trial examiner noted, even if the Company had not placed these restrictions upon the unions' use, "bulletin boards by their very nature do not provide an effective means of communicating with employees on important matters." The message must be short and simple because of space limitations and the little time available for reading to employees hurrying by; in addition, the notice must compete for attention with other notices.

4. Shop Stewards and Union Stewards. The remaining in-plant method of communication is the shop stewards and the union stewards. The stewards, however, are obviously not an appropriate means for placing a substantial message before the entire employee complement more or less simultaneously. Because the Company strictly enforces a ban on solicitation of employees for union membership or dues, and on carrying on union business, upon the premises of the Company during all paid time, whether or not an employee is working, stewards can reach employees only before and after work and during lunch; and since lunch breaks are staggered, this opportunity is further limited.

5. The Company's Offer to Mail Communications for the Unions. Under the circumstances here, the only method which affords an effective means of reaching virtually every employee with a substantial message under conditions which allow thoughtful consideration is direct mail. As has been stated, however, the unions are presently unable to use that method effectively.[3]

Although the Company did offer to mail union communications to the employees' home addresses, that method is plainly unsatisfactory. The Company's offer allows it to preempt the mailing equipment. This would be crucial in times of emergency when the unions might well want to use the mails, for this is the very time when the Company would want to do so as well and would preempt the equipment. Moreover, the offer limits the subject matter of the letters which it will mail for the unions to "matters relating to contract negotiation," leaving the Company as sole judge of what could be mailed. For instance, while the Company did mail out a copy of the unions' contract proposal in November 1968, it refused to send out a survey concerning the employees' interest in an automobile insurance plan. The unions' duties as exclusive bargaining representative do not end at "matters

[3] See p. 469 *supra*.

relating to contract negotiations''; they also include other matters such as this insurance plan.[4]

Thus we find that none of the alternative methods suggested by the Company is adequate to achieve the unions' objective of reaching all the bargaining unit employees. Moreover, as we held in the *Prudential* case, since each of the five alternative methods is inadequate by itself to achieve the desired goal, their aggregation cannot cure the defect.

B. *Relevance*

In *Prudential*, we held that "[a]s the exclusive bargaining representative of all the agents within the unit, the Union has a statutory duty to represent fairly the interests of the . . . nonunion agents as well as the Union members . . . [and] data without which a union cannot even communicate with employees whom it represents is, by its very nature, fundamental to the entire expanse of a union's relationship with the employees." 412 F.2d at 84.

The Company argues that, although the unions' avowed purpose may be relevant, the true motivation for the unions' demand is either to solicit for union membership or to go to the homes of those who did not strike in 1960 and to continue to visit violence upon them. But as we stated in the *Prudential* case, the "complaint that the Union may use this information to solicit new members within the unit is simply of no moment. As the Board has so appropriately indicated, there is no clear distinction between informing nonmembers about the benefits it has obtained and hopes in the future to secure for

[4] Other such matters specifically mentioned at the hearing included advising employees as to their rights under the pension plan; how to collect on group insurance; information on the handling of grievances; decisions of arbitrators, the Board, and the courts; and clarification of employee rights under the collective bargaining agreement, as well a workmen's compensation, social security, and medicare.

them and its solicitation of their support. In any case, union solicitation is itself hardly an evil—especially where, as here, the union is already the exclusive bargaining representative of the employees it is soliciting. *Prudential Ins. Co.* v. *N.L.R.B.*, *supra*, 412 F.2d at 85. There is no evidence that the unions would use the list of addresses to go to the employees' homes for violent purposes.

Finally, in this case as in *Prudential*, "supplying the requested list is no onerous burden; it entails no disruption of the employees' work as is ordinarily involved in allowing union organizers on the premises or permitting union experts to make an independent time study of the operations." *Prudential Ins. Co.* v. *N.L.R.B.*, *supra*, 412 F.2d at 85.

V.

The Company's final claim is that the union's demand for addresses violates the employees' right to privacy, especially in view of the unions' violence against nonstrikers in 1960. That claim, however, has little merit in the circumstances of this case. In determining whether the disclosure of addresses to a union violates the employees' right to privacy, the crucial factor appears to be the likelihood of a clear and present danger to the employees involved. The trial examiner here found little likelihood of a clear and present danger to the nonstriking employees, and there is substantial evidence to support his finding. Although there was evidence of violence in the past, it took place ten years ago, and there has been no evidence of harassment since that time; the threatening statements were merely personal and not attributable to the unions; and no employee testified to present fear of violence.

Petition for review denied and Board's order enforced.

APPENDIX B

Decision and Order of the National Labor Relations Board (Dated April 2, 1970)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case 1-CA-6492

UNITED AIRCRAFT CORPORATION (PRATT & WHITNEY AIRCRAFT and HAMILTON STANDARD DIVISIONS)

and

DISTRICT 91, INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO

DECISION AND ORDER

On November 28, 1969, Trial Examiner Owsley Vose issued his Decision in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. Thereafter, Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief. The Charging Parties filed cross-exceptions and a reply to Respondent's brief. The General Counsel filed a brief in support of the Trial Examiner's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the

exceptions and briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby adopts as its Order the Recommended Order of the Trial Examiner, and orders that Respondent, United Aircraft Corporation (Pratt & Whitney Aircraft and Hamilton Standard Divisions), its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order.

Dated, Washington, D. C., April 2, 1970.

FRANK W. MCCULLOCH, *Chairman*
JOHN H. FANNING, *Member*
HOWARD JENKINS, JR., *Member*

NATIONAL LABOR RELATIONS BOARD

(SEAL)

APPENDIX C

Decision of Trial Examiner

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
WASHINGTON, D. C.

Case 1-CA-6492

UNITED AIRCRAFT CORPORATION (PRATT & WHITNEY AIRCRAFT and HAMILTON STANDARD DIVISIONS)

and

DISTRICT 91, INTERNATIONAL ASSOCIATION OF MACHINISTS & AEROSPACE WORKERS, AFL-CIO

Thomas M. Harvey, of Boston, Mass.,
for the General Counsel.

Joseph C. Wells, of Washington, D. C.,
for the Respondent.

Mozart G. Ratner, of Washington, D. C.,
for the Charging Party.

TRIAL EXAMINER'S DECISION

Statement of the Case

OWSLEY VOSE, Trial Examiner: This case was tried at West Hartford, Connecticut, on July 22-24, 1969, pursuant to a charge filed by District 91, International Association of Machinists & Aerospace Workers, AFL-CIO, on October 16, 1968, and a complaint issued on July 3, 1969. The complaint alleged in substance that the Respondent had violated Section 8(a)(5) and (1) of the Act by refusing, in September and October 1968, and thereafter, the requests of Lodges 1746, 1746A, 743 and 700 of International Association of Machinists and Aerospace Workers, AFL-CIO,

that each Lodge be furnished with the names and home addresses of all the employees in each of their respective collective-bargaining units. The Respondent filed an answer admitting the refusal to furnish the requested information but denying any legal obligation to furnish such information. All parties were represented by counsel and fully participated in the trial. Since that time all parties have filed comprehensive briefs which have been fully considered.

Upon the entire record in the case, and from my observation of the witnesses, I make the following:

Findings and Conclusions

I. The Respondent's Business

The Respondent, a Delaware corporation having its principal office at East Hartford, Connecticut, is engaged in the manufacture and distribution of aircraft engines, helicopters, aircraft accessories and parts, electronic devices and components thereof. The Respondent operates several plants in the State of Connecticut, including plants located at East Hartford, Manchester, Middletown and Southington (Pratt & Whitney Division), and two plants at Windsor Locks (one known as the Windsor Locks plant and the other known as the Building #3 plant). Previously, the operations carried on in the Building #3 plant had been performed in a plant at Broad Brook, Connecticut, called the Broad Brook plant. In addition, the Respondent operates plants in the States of Florida, New York and California. In connection with its operations in the State of Connecticut, the Respondent annually purchases and receives from outside the State of Connecticut goods and materials valued in excess of $1,000,000, and also ships from its plants in the State of Connecticut to points and places outside the State of Connecticut goods and materials valued at in excess of $1,000,000. Upon these facts which are admitted by the Respondent, I find that the Respondent is engaged in commerce within the meaning of Section 2(6) and (7) of the

Act and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organizations Involved

Lodges 1746, 1746A, 743 and 700 of International Association of Machinists and Aerospace Workers, AFL-CIO, are all affiliated with District 91, a District Lodge chartered by the International. All four local lodges and District Lodge 91, the Charging Party herein, are labor organizations within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

The Respondent's refusal of the Lodges' request for the addresses of employees in their respective bargaining units, in violation of Section 8(a)(5) and (1) of the Act.

A. *The Facts*

1. Background; history of bargaining relations

a. *The bargaining history prior to the 1960 strike*

As indicated above, the Respondent's operations are carried on in two main divisions, the Pratt & Whitney Division and the Hamilton Standard Division. Involved in this case are six units of employees at various of the Respondent's plants in both divisions. The parties stipulated at the hearing that each of these six units discussed below constituted appropriate units for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

In the Pratt & Whitney Division, the Board certified Lodge 1746 as the collective-bargaining representative of the employees in the East Hartford, Connecticut, plant following an election in 1945. Certification of Lodge 1746 as the exclusive representative of the employees of the Manchester plant followed an election among these employees

in 1957. Lodge 1746A was certified by the Board as the collective-bargaining representative of the employees at the Respondent's Southington plant in 1951. The record does not reveal the origin of the bargaining relationship between the Respondent and Lodge 700 representing the employees at the Respondent's Middletown plant. However, the record indicates that Lodge 700 has had contracts covering the employees of the Middletown plant going back some years, as has Lodge 1746A for the employees at the Respondent's Southington plant. Lodge 1746 has had collective-bargaining contracts covering the employees at the Respondent's East Hartford and Manchester plants going back, with few interruptions, almost to the dates of the original certifications.

In the Hamilton Standard Division, Lodge 743 was certified by the Board as the exclusive bargaining representative of the employees at the Respondent's Windsor Locks plant in 1941, and at the Respondent's Broad Brook plant in 1954. The employees in these two plants also have been covered by collective-bargaining contracts between the Respondent and Lodge 743 almost continuously since their original certification.

b. *The strike; the actions and counter actions commenced by the Respondent and Lodges 1746 and 743*

The negotiations between the Respondent and Lodges 1746 and 743 for new contracts to succeed those expiring in the latter part of 1959 and the early part of 1960 covering the employees of the Respondent's East Hartford, Manchester, Windsor Locks and Broad Brook plants became stalemated, and on June 8, 1960 the employees of these four plants went out on strike. Lodges 1746A and 700, representing the employees at the Respondent's Southington and Middletown plants, respectively, reached an agreement with the Respondent concerning the terms of successor contracts and the employees at these plants did not participate in the strike.

The strike in which Lodges 1746 and 743 engaged commencing on June 8, 1960, was attended, as the Board has found, by "mass picketing and violence" (*United Aircraft Corporation*, 134 NLRB 1632). A few days after the strike began the Respondent commenced actions against Lodges 1746 and 743 and District Lodge 91 in the Connecticut Superior Court, Hartford County, seeking injunctive relief and large sums in damages. The Respondent also filed unfair labor practices charges against Lodges 1746 and 743. Upon the basis of these charges the Board's Regional Director initiated proceedings in the United States District Court for the District of Connecticut seeking an injunction against the Lodges under Section 10(j) of the Act. In both the State and Federal Court proceedings the parties entered into stipulations about the middle of June 1960 whereby the Lodges agreed to cease their mass picketing and other illegal activities.

As a result of these stipulations the mass picketing and violence at the picket lines subsided. However, the Lodges thereafter continued to engage in violence away from the picket lines against non-strikers. As was stated much later in the opinion of Judge Gaffney of the Connecticut Superior Court, Hartford County, in sustaining the action for damages brought by the Respondent against Lodges 1746 and 743 resulting from tortious conduct during the strike (68 LRRM 2488, 2494):

> As such they [the night riders] damaged automobiles of non-striking employees. They flooded the cellars of their houses, they burned their hedges, they threw paint bombs through their house windows. They tried to burn a barn behind a house where many non-strikers lived. They burned one of the non-striking employee's automobile.

Ultimately, on August 9, 1960, Lodges 1746 and 743 agreed on the terms of new contracts, and a strike settlement agreement was reached on August 11, 1960.

On November 21, 1960, Lodge 1746 filed the first of a lengthy series of charges which were filed with the Regional Director against the Respondent by Lodge 1746, Lodge 743, Lodge 709 and by various individuals alleging in substance that the Respondent had discriminated against some 3800 strikers, in violation of Section 8(a)(3) and (1) of the Act, by failing to restore them to their prestrike jobs, and had refused to bargain collectively with the Lodges in violation of Section 8(a)(5) of the Act by failing to furnish certain employee data and information to the Lodges.

In 1961 Lodges 743 and 1746 commenced an action against the Respondent in the United States District Court for the District of Connecticut seeking damages and specific performance of the 1960 strike settlement agreement. The crux of the Lodges' complaint was that the Respondent had failed to recall about 3800 strikers to jobs which they had held before the strike.

c. *The 1963 unfair labor practice proceedings heard by Trial Examiner Best; the related Section 10(j) proceeding in the United States District Court*

In February 1963 the General Counsel, on the basis of the various charges mentioned above, issued a complaint alleging that the Respondent had violated Section 8(a)(1) and (3) of the Act by failing at the end of the strike to restore about 3800 strikers to their prestrike jobs and had violated Section 8(a)(5) and (1) of the Act by failing to provide the Lodges with information and data concerning its employees (Case Nos. 1-CA-3355, *et al*). A hearing on this complaint commenced on May 16, 1963, before Trial Examiner Lee Best. The hearing continued intermittently until June 11, 1963. During this period, the General Counsel frequently amended his original complaint to include events occurring during the hearing. Thus, in 1964 the Lodges requested that the Respondent furnish them with copies of almost all of its personnel records for each employee in the bargaining units here involved. When the Respondent refused to do

more than make such records available to the Lodges for their inspection and copying, unless they would agree to pay the cost of reproducing such copies, the complaint was amended at the request of the General Counsel to allege that the Respondent's action violated Section 8(a)(5) and (1) of the Act. Thereupon the General Counsel petitioned the United States for the District of Connecticut an order under Section 10(j) of the Act compelling the Respondent to furnish the copies of the requested records. This action had not been heard as of the time of the hearing in the instant case in July 1969 because of a stipulation of the parties, entered into with the Court's approval, whereby the Respondent undertook to supply copies of the documents and records upon the Lodges' posting a bond insuring payment of the Respondent's costs in the event that it was eventually determined that the Respondent was not required as a matter of law to furnish the copies to the Lodges at its own expense. Among the copies of documents supplied by the Respondent were copies of so-called "Put on" slips recording the hire of employees. Under the stipulation the Respondent supplied the Lodges with copies of these forms on which the new employee's home address was blocked out.

The proceeding before Trial Examiner Best ultimately culminated on July 29, 1969, in his decision finding that the Respondent had violated Section 8(a)(3) and (1) of the Act by its action, as the jobs of certain unidentified strikers who had registered for reinstatement pursuant to the strike settlement agreement became available, in promoting or transferring previously reinstated strikers into these jobs rather than reinstating the registered strikers to their former jobs, by its action in requiring all strikers not reinstated prior to January 1, 1961 to apply for jobs as new employees, and by depriving strikers who were reinstated after January 1, 1961, of their previously acquired seniority and other rights and privileges. Trial Examiner Best dismissed the allegations of the complaint that the Respondent

had refused to furnish information in violation of section 8(a)(5) and (1) of the Act. Trial Examiner Best's decision and recommended order are presently pending before the Board.

d. The 1965-1966 bargaining negotiations with Lodges 1746 and 743; the Respondent's withdrawal of recognition from the Lodges; the 1966 unfair labor practice proceeding heard by Trial Examiner Ricci

The contracts which were entered into with Lodges 1746 and 743 at the time the strike was settled were succeeded by contracts executed by the parties late in 1962 and early in 1963 which were due to expire late in 1965 and early in 1966. The Lodges gave timely notice of intention to terminate these contracts and early in October 1965 the Respondent's representatives commenced negotiations with Lodge officers and committeemen concerning the terms of successor contracts. During this same period the Respondent's officers and officers and representatives of the International were having "off-the-record" discussions regarding possible settlement of all the pending lawsuits, including the civil actions in which each party was seeking damages running well into the millions of dollars from the other and the unfair labor practice proceeding which was then being heard by Trial Examiner Best. Agreement was reached between the Lodges' negotiators and the Respondent's representatives on economic terms early in December. The International officers and representatives continued their "off-the-record" discussions with the Respondent's officers. The Lodge negotiators and the Respondent's representatives could not resolve their differences concerning the Lodges' demand for some form of union security and an acceptable arrangement for reinstatement or seniority rights for the 1960 strikers. Informed of this, the Lodge negotiators instructed the International representatives to present a list of 21 demands, most of them far in excess of previous union

proposals, including quick payment of a $22.5 million back pay settlement. When the Respondent's representatives were informed of these new demands at a meeting on March 2, 1966, the negotiations collapsed.

However, the next day Lodge 1746 (Lodge 743's contract had not yet expired) offered to renew the old contract for 3 years, modified only in respect to the economic items which had previously been agreed upon, and with the understanding that the contract would be subject to the Board and court decisions in the pending unfair labor practice cases.[1]

At a meeting on March 10 and 11, 1966, the Respondent questioned the Lodges' majority status and refused to negotiate further until they could demonstrate their majority status in a Board-conducted election.

Lodge 743 responded by filing a charge alleging violations of Section 8(a)(5) and (1) of the Act (Case No. 1-CA-5372). As stated above, Local 1746 had previously filed a Section 8(a)(5) and (1) charge against the Respondent in Case No. 1-CA-5245. The General Counsel consolidated both of these cases and issued his complaint on June 2, 1966. At about the same time the General Counsel filed a petition in the United States District Court for the District of Connecticut for an injunction under Section 10(j) of the Act to compel the Respondent to continue its recognition of the Lodges. The District Court on August 5, 1966, entered an order directing the Respondent to recognize and bargain collectively in good faith with Lodges 1746 and 743. The Respondent did not appeal from this order.

Instead, in the latter part of September 1966 the Respondent entered into comprehensive collective-bargaining con-

---

[1] In addition to the case which was pending before Trial Examiner Best Lodge 1746 had filed a charge on November 19, 1965, alleging that the Respondent was refusing to bargain collectively in good faith with the Lodges (Case No. 1-CA-5245). The General Counsel had not as yet issued a complaint in this case.

tracts with Lodges 1746 and 743. These contracts, which expired November 30, 1968, and April 21, 1969, respectively, provided for, among other things, recognition of the Lodges as exclusive collective-bargaining agents of the employees in the units involved (Article II) and the checkoff of union dues (Article IV). No other form of union security was provided in the contracts. The contracts also provided for the naming of an undetermined number of shop stewards to represent various areas of the plants in connection with the handling of grievances; for paying shop stewards for time spent handling grievances up to a maximum of two hours per week; and for compulsory arbitration of certain specified types of grievances (Article V). The contracts specifically prohibited the solicitation of employees for union membership or dues on company premises by union representatives or employees during working hours (Article III). The contracts also provided for the posting on company furnished bulletin boards of certain categories of union notices after approval by company representatives (Article X). In addition the contracts contained the following "savings clause" (Article XIII):

> This agreement shall not in any manner constitute any admission, concession, or waiver of any position, contention, right, or argument which either party signatory hereto has heretofore advanced or asserted in connection with the subject matter of any case now pending before the National Labor Relations Board or in Court (including any issue of fact or law therein). It is further agreed that, in the event, during the life of this agreement, it is determined by the Board, or, if appeal is taken from the Board's decision, by the final reviewing Court with jurisdiction in Case Nos. 1-CA-5245 and 1-CA-5372 now pending before the National Labor Relations Board that the Company was not, on March 11, 1966, obligated under the National Labor Relations Act to recognize and bargain with [the unions] as the exclusive representative of the employ-

ces, for the purpose of negotiating new contracts, the company may terminate this agreement on ten (10) days' written notice notwithstanding the provisions of Section 1, 2, or 3 of Article XII of this agreement, and, in the event of such termination, all obligations of either party shall immediately terminate under the conditions provided in Section 3 of Article XII.

When in the course of subsequent proceedings in the District Court the fact of the Respondent's execution of the contracts with Lodges 1746 and 743 was reported to the Court, the Court on September 29, 1966, sua sponte dissolved its order of August 5, 1966.

The unfair labor practice proceeding involving the Respondent's withdrawal of recognition from Lodges 1746 and 743 in March 1966 and its refusal to bargain collectively with these Lodges thereafter came on for hearing before Trial Examiner Thomas Ricci in July 1966. On October 17, 1966, Examiner Ricci issued his decision finding that the Respondent had refused to bargain collectively with Lodges 1746 and 743, in violation of Section 8(a)(5) and (1) of the Act, by its conduct in March 1966 and thereafter.

As indicated above, Lodge 709 had in the past represented the employees at the Respondent's Middletown plant and had collective-bargaining contracts with the Respondent covering the employees at this plant. However, at some time prior to the middle of 1966 the Respondent had ceased operating the Middletown plant. After the Respondent reopened the Middletown plant in July 1966, Lodge 709 requested recognition as the exclusive representative of the employees in the reopened plant. At this time the Respondent agreed to grant such recognition, upon being furnished with proof of majority status, and to enter into a collective-bargaining contract, provided that there was included in the contract with Lodge 709 Article XIII of the contract between the Respondent and Lodges 1746 and 743, the "savings clause" giving the Respondent the option of terminat-

ing the contract upon 10 days' notice under the conditions stated in Article XIII.

On November 27, 1967, the Board issued its decision and order upholding Trial Examiner Ricci's findings (168 NLRB No. 66, 67 LRRM 1010). Petitions for review of the Board's decision and order were promptly filed, and ultimately the Court of Appeals for the District of Columbia Circuit, on May 29, 1968, handed down its decision setting aside the Board's decision and order of November 27, 1967 (71 LRRM 2336).

c. *The collective bargaining negotiations in late 1968 and early 1969*

In view of the positions taken by the Respondent during the 1968-1969 negotiations concerning the Lodges' majority status, it may be helpful to set forth at this point the evidence concerning dues checkoff authorizations which the General Counsel contends proves the majority status of the Lodges in the appropriate units at all times relevant in this case.

As to the Pratt Whitney Division, records furnished by the Respondent (Respondent Exhibit 3-A) establish that sometime in the month of November 1968 the number of Lodge 1746 dues checkoff authorizations in the Respondent's possession reached 53 percent of the approximately 17,000 employees in the East Hartford and Manchester plants.[2] This percentage gradually increased in the following 6 months for which figures are available. These rec-

[2] Although I have been unable to find an explicit statement in the record to the effect that the figures prepared by the Respondent giving the percentage of employees on check off at East Hartford include also the 150-200 employees in the nearby Manchester plant, I infer that this is the case from the fact that Respondent Exhibit 1 was prepared on this basis (Tr. 110) and that the Respondent has not singled out the Manchester plant for a special challenge of its majority status.

ords show with respect to the Middletown plant that sometime in October the number of Lodge 700 dues checkoff authorizations delivered to the Respondent reached 34.4 percent of the approximately 1500 employees at this plant. These records also show that the payroll at this plant steadily increased in the ensuing 7 months, and that while the percentage of employees on checkoff fluctuated during this period, the employees of which are represented by Lodge 1746A, the Respondent has consistently acknowledged its majority status. At the time of the 1968 negotiations over 80 percent of the 3,000 employees at the Southington plant were on checkoff.

Regarding the Hamilton Standard Division, the Respondent records reveal that sometime during the month of November 1968, the number of Lodge 743 dues checkoff authorizations in the Respondent's possession from Windsor Locks employees reached 51.2 percent of the approximately 4,000 employees at this plant. The percentage of employees on checkoff continued gradually to rise in the following 6 months for which figures are available. Similarly the Respondent's records show that sometime during the month of December 1968 the number of dues checkoff authorizations from employees at the Building #3 plant (formerly Broad Brook) reached 51.2 percent of the 382 employees at this plant. The percentage of employees at this plant on checkoff fluctuated, but it remained above 51.2 percent for each of the 5 following months for which figures are available.

The negotiations for collective-bargaining contracts to succeed the contracts entered into in 1966 after the entry of the District Court Section 10(j) injunction order commenced in November 1968 for the plants in the Pratt & Whitney division and in March 1969 for the plants in the Hamilton Standard division.

On November 4, 1968, at the beginning of the negotiations between the Respondent and Lodge 1746 covering the East

Hartford and Manchester plants, the Respondent raised a question concerning Lodge 1746's majority status at East Hartford, the largest of all the plants here involved. At the second meeting on November 14, 1968, Lodge 1746 offered the Respondent 600 additional dues checkoff authorizations at this time, asserting that these checkoff authorizations together with those already in the Respondent's possession should establish its majority status to the Respondent's satisfaction. However, at this time Lodge 1746 offered to submit to a Board-conducted election if the Respondent deemed the checkoff authorizations insufficient for this purpose. The Respondent, without attempting to ascertain the precise nature of Lodge 1746's offer to submit to an election, decided that it would rather continue the negotiations with the understanding its right would be protected by the inclusion of the "savings clause" (Article XIII) giving it the option to terminate the contract in the event the Court of Appeals for the District of Columbia Circuit should rule in the case then pending that the Respondent had not been obliged to recognize the Lodge in March 1967. The Lodge took the position in response that the alternatives proposed by it to establish its majority status should be sufficient to satisfy the Respondent and that it would oppose the inclusion of the "savings clause" in any future contract.

In the negotiations on November 13, 1968, it was stated on behalf of Lodge 700 representing the employees at the Middletown plant (about 1,600 employees) that the dues checkoff authorizations from more than a majority of the employees at this plant had already been submitted to the Respondent, and that in view of this fact Lodge 700 would oppose the inclusion of the "savings clause" in any contract negotiated.

At the negotiating meeting on November 20, 1968, Justin Ostro, the union negotiator, after reciting the Lodges' previous offers of proof that a majority of the employees "in

all bargaining units, East Hartford, Middletown, and Southington," have voluntarily executed checkoff authorizations, and asserting that the Respondent had refused their offer to prove their present majority in a Board-conducted election, asked that the Respondent "unconditionally and unequivocally" recognize the Lodges as exclusive bargaining representative of the employees in the Pratt & Whitney plants and that it abandon its demand for the inclusion of Article XIII, the "savings clause," in the new contracts. At the bargaining meeting the next day, the day the 1966 contracts expired, the Respondent agreed to sign a contract with the Lodges containing the exclusive recognition provisions requested by the Lodges and agreed to delete Article XIII, the "savings clause," from the contract. However, the parties orally asserted that they were not, by such action, waiving any legal positions previously taken, and intended to take action in the future to protect all their legal rights.

Thereafter new 3-year contracts were signed by the Respondent and Lodge 1746, effective December 1, 1968, covering the employees at the East Hartford and Manchester plants.[3] A similar contract effective about the same date was signed by the Respondent and Lodge 700 covering the

[3] After a disagreement between the parties resulting from the discharge of a union steward, Thomas Wiseman, in January 1969, the Respondent contending that the discharge should be processed under the grievance provisions of the new contract and Lodge 1746 taking the position that the discharge was an unfair labor practice to be processed by the Board, the Respondent in January 1969 filed a charge with the Board's Regional Director against Lodge 1746 alleging that it had violated Section 8(b)(3) of the Act by refusing to bargain collectively with it about the discharge of Wiseman. Lodge 1746 had on January 31, 1969, filed a charge with the Regional Director alleging that Wiseman's discharge violated Section 8(a)(3) of the Act. The Regional Director issued a complaint on Lodge 1746's charge and declined to issue a complaint on the Respondent's charge. On May 2, 1969, the Respondent appealed to the General Counsel from the Regional Director's refusal to issue a complaint on its charge against Lodge 1746.

employees of the Middletown plant. And a 3-year contract, effective December 5, 1968, was thereafter signed by the Respondent and Lodge 1746A covering the employees of the Southington plant.

In the negotiations commencing in March 1968 between the Respondent and Lodge 743 for successor contracts covering the Windsor Locks and Building #3 plants in the Hamilton Standard division, the Respondent did not question the Lodges' majority status in these two units. At the bargaining meeting on March 19, 1969, Ostro, the union negotiator, asked whether, in view of the number of employees on checkoff the Respondent was challenging Lodge 743's status as exclusive bargaining representative. The only reply of Nathaniel Morse, the Respondent's Industrial Relations Director, was "have you heard any," meaning any such challenge, to which the union negotiator replied "no." After several months of bargaining, successor contracts covering the employees at the Windsor Locks and Building #3 plants were signed on July 1. The contracts were made effective as of April 21, 1969.

All of these contracts covering the employees in both the Pratt & Whitney and Hamilton Standard divisions contained the exclusive recognition provisions and the other provisions mentioned in connection with the discussion of the 1965 and 1966 contracts. In addition these contracts contained new provisions granting various benefits not previously accorded the Respondent's employees. None of the contracts contained Article XIII, the "savings clause," giving the Respondent the option of terminating the contract upon 10 days notice, depending upon the outcome of the case then pending in the Court of Appeals for the District of Columbia Circuit. It is to be noted that at the time of the actual signing of the Windsor Locks and Building #3 contracts, the Court of Appeals decision upholding the Respondent's position, had been outstanding for about a month, the Court of Appeals decision having been rendered on May 29, 1969.

2. The Respondent's refusal to furnish the Lodges with the addresses of its employees

By letter dated September 19, 1968, signed by the presidents of all four Lodges, the Lodges requested that the Respondent furnish each Lodge with the names and addresses of all members of each bargaining unit. In the letter the Lodges reminded the Respondent of the previous occasions in 1964 and 1965 on which Lodges 1746 and 743 had previously requested that they be furnished with the addresses of all the employees in their respective bargaining units and, after referring to the forthcoming negotiations, asserted that lists of the names and addresses of all employees in the bargaining units were indispensable to the performance of their statutory responsibilities with respect to contract negotiations, grievance investigations, preservation of their status as exclusive bargaining agents, and were necessary to afford the Lodges an equal opportunity to counter company propaganda. In support of their request, the Lodges cited the recent holding of the Court of Appeals for the Ninth Circuit in the *Standard Oil* case,[4] under circumstances asserted to be analogous to those in this case, that the union there involved was entitled to a list of the names and addresses of all the employees in the bargaining unit. In the letter, the Lodges quoted from the Court's decision language to the effect that communication with all of the employees is essential in order to enable the bargaining agent adequately to perform its statutory duty fairly to represent the interests of all the employees in the unit, nonunion employees as well as union members.

In a letter to District 91 dated September 30, 1968, the Respondent declined to furnish the addresses, without expressly saying so. Instead it advanced various reasons to why the Lodges were in error in requesting the addresses. The Lodges replied to this letter by letter dated October 10, 1968, in which they attempted to answer arguments ad-

---

[4] *Standard Oil Co. of California* v. *N.L.R.B.*, 339 F.2d 639.

vanced by the Respondent and gave further reasons supporting their request for the addresses.

In its response to District 91 dated October 15, 1968, the Respondent offered, as an alternative to furnishing the addresses to allow the Lodge to use its mailing facilities for the purpose of mailing letters to all unit employees "on matters related to contract negotiations." This offer and the Lodges' response is discussed more fully below.

On November 29, 1969, the Respondent's continuing refusal to furnish the addresses of unit employees was referred to in the contract negotiations with Lodge 1746. In the negotiations on the following day the Lodge explicitly stated that by entering into the contract, "the union does not intend to waive, and has not waived, any statutory rights . . . heretofore asserted in litigation . . . such as . . . addresses of bargaining unit employees."

At the hearing in this case on July 24, 1969, Industrial Relations Director Morse testified that the Respondent's policy, which has been in effect for 30 years, is to refuse to release the address of any employee to any organization or any person for any purpose, without the permission of the employee.

3. The Lodges' need to have employees' addresses in order to communicate with unit employees

Justin Ostro, the Lodge's chief negotiator, was a representative of the International assigned to District 91 and the four Lodges here involved. Ostro testified that the Lodges needed the employees' addresses so as to be able to communicate with not only members of the Lodges, but also nonmembers about various matters. The Lodges desired to give information to the employees, among other things, about impending elections, both union and civil, new services afforded by the Lodges, the interpretation of contract provisions, and the rights of the employees with respect to group insurance, pensions, workmen's compensation, social security and medicare. Other subjects concern-

ing which the Lodges sought to inform the employees were the handling of grievances, decisions of arbitrators, the Board and the courts, and the actions of legislative bodies regarding matters of interest to the employees.

According to Ostro, the Lodges also needed the addresses of unit employees in order to ascertain the desires of non-members as well as members of the Lodges, with respect to proposals to be made in bargaining negotiations.

Ostro further testified that having the employees' addresses, would facilitate the contacting of employees to investigate grievances or alleged unfair labor practice charges. Finally, Ostro testified that reaching employees by mail at their homes enabled the Lodges to place the material in the employees' hands at a time when they would have time carefully to consider it. The Lodges experience has been, according to Ostro, that when the material disseminated includes business reply envelopes, a larger number of employees participate when the materials are mailed directly to the employees' homes than when any other method of distribution is used.

4. The methods of communicating with employees currently utilized by the Respondent and the Lodges

a. The problem of communicating with the Respondent's employees in view of the large numbers involved and their wide dispersion

In view of the very large numbers of the Respondent's employees and the wide dispersal of their homes communication with all of them is necessarily a difficult undertaking. As of the end of 1968 there were almost 17,000 employees at the Respondent's East Hartford and Manchester plants. An exhibit prepared by the Respondent (Resp. Exh. 1) shows that only a little over 6,000 of these employees live in towns which are closer than 7 miles from the plant. The rest live in some 118 different towns in Connecticut, in 27 towns in Massachusetts, and in various places in Rhode

Island, New Hampshire, Vermont, Maine, New York and other States. As few of these employees live more than 50 miles from East Hartford and a substantial number live more than 25 miles from the East Hartford plant.

Respondent Exhibit 1 shows a comparable dispersion of employees working at the other plants in the Pratt & Whitney division. Of the approximately 3,000 employees working at the Southington plant in December 1968, only 641 lived in Southington itself. The homes of the rest are scattered over a radius of 41 miles from the plant. Only 693 of the 1,700 employees working at the Middletown plant in December 1968 lived in Middletown. The rest are scattered over a radius of 66 miles from the plant, in various towns in Connecticut, Massachusetts, Rhode Island, Maine, New York and other States.

The same wide dispersion of employees' homes is found at the Respondent's Windsor Locks and Building #3 plants in the Hamilton Standard Division. Respondent Exhibit 2 gives the figures as of June 20, 1969, as to the places of residence of the employees of the Windsor Locks plant, which are stipulated to be representative for the employees of the Building #3 plant also. Windsor Locks had over 4,500 employees as of June 20, 1969 and Building #3 a little over 500. The Windsor Locks employees lived in 105 different towns in Connecticut and 65 towns in Massachusetts. Only 821 of the 4,500 Windsor Locks employees lived closer than 7 miles from the plant. The rest of the employees were dispersed over an area having a radius of more than 45 miles from the plant.

b. *The Respondent's methods of communicating with employees*

The Respondent has traditionally used various means of communicating with employees. In addition to the handbook "You and Your Company" which is given to all employees at the time of their hiring, the Respondent puts out semimonthly house organs to the employees of both divi-

sions. In the Pratt & Whitney Division it is called the "Power Plant" and in Hamilton Standard Division the publication is called the "Hamilton Standard." In addition to these two division-wide publications, the Respondent issues a quarterly corporation-wide publication called the "Bee-Hive." None of these publications normally contains any information about contract negotiations or labor relations matters.

These various house organs are distributed to the employees by means of racks placed at the various plant exits. The racks are so constructed that they can be locked, and the Respondent's practice is to have the racks locked at all times except at the end of the various shifts, so that these publications are available to the employees only on their way home.

For many years the Respondent has used bulletin boards as a means of communicating with its employees. At the East Hartford plant Respondent has for a long time had specially constructed glassed-in locked bulletin boards about 3 feet high and 8 feet wide erected at prominent places in the plants. These bulletin boards are divided into separate sections, a section for the Respondent's general notices, and smaller sections for credit union notices, Aircraft Club notices and union notices. In the Hamilton Standard division the bulletin boards are apparently smaller. The collective-bargaining contracts covering the employees in both divisions in recent years have provided that employer-approved notices concerning union meetings, elections, and union social affairs could be posted on the company bulletin boards.

The Respondent has traditionally used the mails to communicate important messages to its employees. While this means of communications has not been used with great frequency in the past, it has been used with some regularity by the Respondent when it has had serious problems in con-

nection with contract negotiations or other phases of labor relations.

Thus, in the 1960 negotiations with Lodge 743 for successor contracts covering the Windsor Locks and Broad Brook plants, the Respondent mailed letters to the employees' homes to urge them to reject the recommendations of the Lodge 743 negotiators that the Respondent's proposals be voted down. Similarly, after the rank-and-file members of Lodge 1746 in 1960 had voted down the contract proposals agreed upon by the Respondent and Lodge 1746 negotiators for the East Hartford and Manchester plants, the Respondent mailed letters to all the unit employees at these plants setting forth various arguments justifying the Respondent's position on the issues on which the parties were in disagreement. Again, after the negotiations between the Respondent and Lodges 1746 and 743 collapsed in March 1966, the Respondent mailed a series of letters to the employees of the East Hartford, Manchester and Windsor Locks plants explaining and justifying its action, and informing them of an employee complaint procedure which it was putting into effect for the employees' benefit. In November 1968, after the Respondent refused the Lodges' request for the home addresses of the employees, the Respondent utilized the mails to explain its action to all the employees involved. In a letter dated November 5, 1968, to the employees, the Respondent stated that it had agreed to permit the Lodges to have the use of its mailing facilities in order to enable them to communicate with non-members as well as members about contract proposals and negotiations. This procedure, the Respondent explained, would enable it to adhere to its longstanding policy of protecting the privacy of the employees' homes.

Industrial Relations Director Morse testified in effect that the Respondent would continue to communicate with its employees by mail whenever it decided that this would be the most effective means of communicating with the employees about the particular subject which was involved.

c. *The means used by the Lodges to communicate with employees*

The Lodges used handbills more than any other means of communications when they had messages to impart to the employees. The Lodges would have handbills passed out to the employees as they entered the plants at the beginning of the various shifts. During 1968, the Lodges distributed handbills on 45 to 50 occasions. In addition to handbills, the Lodges also passed out copies of the District 91 monthly publication, the "New Union News" to the employees as they entered the plants.

The Lodges prefer the beginning of the shift for the distribution of union literature, so George Cope, a business representative of District 91, testified, for the reason that employees who arrive early have time to read them before starting to work, others can read them during the lunch hour, and also employees are more likely to take handbills at the beginning of the shift than when they are rushing to get home at the end of the shift. International Representative Ostro testified that another reason the Lodges chose the beginning of the shifts as the time to distribute union literature was that frequently the material referred to situations in the plant which the Lodges desired the employees to look into during their shift.

At some undisclosed time in the past the Local 1746 president requested the Respondent to permit it to station its handbill distributors inside the plants to avoid bad weather. While denying such permission, the Respondent offered to open the racks, which it used to make available its house organs to the employees, to union handbills, providing no conflicting use of the racks was planned. This possiblity was explored by the Lodges and Lodge 743 accepted the offer for a considerable period of time. However, the other Lodges, after ascertaining that the racks would be open only at the end of the shift, as the employees were leaving the plant, and that advance notice was re-

quired to avoid conflicting demands on the use of the racks, declined to accept the offer.

The Lodges also use the mails to reach those of their members for whom they have up-to-date addresses. Members of the Lodges receive the weekly newspaper put out by the International, the Machinist, as well as various individualized mailings. Lodge 1746, the largest of the Lodges here involved, sent out three such mailings in 1969 up until the hearing in July. Two of these were letters notifying members of an impending election of officers. The other was a letter explaining a discount tire purchase program which was available for union members.

As indicated above, on one occasion, during the pendency of the 1968 negotiations, the Respondent offered to allow Lodges 1746, 1746A and 700 to use its mailing facilities to mail information to all unit employees. This offer was contained in the Respondent's letter to District 91 dated October 15, 1968. In this letter the Respondent referred to the Lodges' apparent interest in ascertaining the views of nonmembers regarding proposals to be advanced in the forthcoming negotiations, as indicated in handbills distributed by the Lodges. The letter then went on to offer, whenever a Lodge wished to write letters to all employees in the bargaining units "on matters related to contract negotiations," to permit the use of its addressograph equipment for the addressing of the sealed, stamped envelopes furnished by the Lodges and, with the Lodges participating, to handle the mailing of these letters. In the discussions about the Lodges' acceptance of this offer which followed, it was made known to the union negotiators, as International Representative Ostro testified, that the offer was subject to the availability of the Respondent's addressograph equipment, and that the Respondent had first call on that equipment.

Lodges 1745, 1746A and 700 accepted the Respondent's offer to use its mailing facilities in the first half of Novem-

ber 1968, sending out on this occasion to all employees in the units represented by these Lodges a copy of the Lodges' contract proposals together with a covering letter pointing that if they wanted to have an opportunity to vote on acceptance of the Respondent's final offer that they would have to become members of a Lodge.

However, when the Lodges sought to use the Respondent's mailing facilities a second time in March 1969 to mail out a survey concerning the employees' interest in an automobile insurance plan, the Respondent refused permission on the grounds that the survey related to a commercial matter and did not have anything to do with collective bargaining.

The Respondent's offer of mailing privileges was unsatisfactory, Ostro testified, because of the limited subject matters about which the Respondent would permit the Lodges to communicate with the employees, and because of the unavailability of the Respondent's equipment on short notice. On occasions, so Ostro testified, the Lodges have a need to communicate with the employees overnight, and due to the Respondent's own needs for the use of its addressograph equipment, it understandably could not always provide such prompt service.

Another means of communicating with employees used by the Lodges is through their stewards. The Lodges had between 85 and 100 shop stewards who were authorized to spend up to 2 hours per week handling grievances arising under the contractual grievance procedure. The Lodges had about 400 additional union stewards who could communicate with employees before and after work and during lunch hours, if the stewards could locate the employees. However, there are many departments on some shifts for which no steward is available or is not accessible, as a practical matter, because of his distant work station. A few of the employees have roving work stations and thus cannot be located by stewards even though the Respondent

furnishes the Lodges periodically with lists of the departments to which each employee is assigned. Another factor limiting the ability of the Respondent's stewards to communicate with employees is the Respondent's strict enforcement of its no-solicitation rules and of the contract ban on solicitation of union dues and memberships during working hours. This limits the union stewards' opportunity to discuss matters with employees in their jurisdiction to periods before work and lunch periods (the employees leave the plant promptly after work). However, the employees have staggered 15-minute lunch breaks, spread over 2 hour period, and this further limits the opportunities for conversations between stewards and employees.

5. The Respondent's contentions concerning the adequacy of the Lodges' present modes of communicating with employees

The Respondent contends that the various means of communicating with employees which have been utilized by the Lodges in the past, together with the additional methods offered by the Respondent and declined by the Lodges, constitute more than an adequate means of communicating with the employees in the bargaining units, nonmembers of the Lodges as well as members.

With respect to handbilling, in large plants like the Respondent's (there are almost 17,000 employees at East Hartford), the very large number of employees in itself makes the attainment of nearly 100 percent coverage of the unit employees—the Lodges' goal—extremely difficult. Wherever a large number of employees enter the same entrance at the same time, which is frequently the case at the Respondent's plants, numerous employees are missed by the handbillers. Representatives of the Lodges testified to the very serious logistical problems involved in having a sufficient number of handbillers adequately supplied with a sufficient quantity of handbills at the numerous entrances

to the various plants. In addition to this, bad weather and personal problems, such as car breakdowns, last minute illnesses, and even oversleeping, prevent the Lodges from achieving satisfactory coverage of the employees. Because of most of the most effective locations for passing out handbills are on company property, and because the Respondent does not permit non-employees to distribute handbills on company property at the locations deemed by them the most effective, the Lodges for the most part do not use their own paid employees to distribute handbills. Instead, they rely on active members working in the plant to do so. As found above, the handbillers pass the handbills out before the beginning of their shift. They have to stop distributing the handbills in time to reach their work stations before starting time. This leaves their handbilling stations unmanned while the late comers arrive. The Lodges also have difficulty in covering the employees who have irregular starting times because the employees who normally would take care of them are already at work. Of course, the handbillers cannot reach absent employees. In view of the Lodges' responsibility of acting for all of the employees in their respective bargaining units, handbilling, in my opinion, does not afford an adequate means of communicating with the employees.

Although the Respondent makes available space on its bulletin boards for the posting of union notices, the collective-bargaining contract, as found above, strictly limits the subjects about which union notices can be posted, and the Respondent's approval must first be obtained before the Respondent posts the notice.

Twice in recent months the Respondent has refused to post notices submitted by the Lodges for posting. On the first occasion the Respondent refused to post a notice submitted by Lodge 700 concerning a golf league. The Respondent took the position that the notice concerned a recreational activity within the realm of the Aircraft Club

rather than a social activity within the scope of the topics permitted by the contract. On the second occasion Lodges 1746, 1746A and 743 had specially printed notices prepared regarding shop steward elections. The Respondent refused to permit the posting of these notices with the explanation that they were too large for posting within the existing union space on the bulletin boards. The Respondent also asserted that the inclusion on the notices of very small scale maps of the plants created security problems. Even after the Lodges pointed out that the Southington and Windsor Locks maps revealed no information of a security nature and offered to block out maps on the notices for those two plants, the Respondent still refused to permit the posting of the notices at these two plants. The Respondent persisted in its refusal throughout all four steps of the grievance procedure and finally refused to agree to arbitration of the dispute.

Even if the Respondent had not placed restrictions upon Lodges' use of its bulletin boards, bulletin boards by their very nature do not provide an effective means of communicating with employees about important matters. At the Respondent's plants a large number of notices usually remained posted at the same time—notices posted by the Respondent, the credit union, the Aircraft Club and the Lodges. Among this galaxy of notices it was difficult for the Lodges to attract attention to their notices, as International Representative Ostro testified. Employees tend to hurry past the notices on the way out of the plant after work, as Ostro further testified, and the only time employees normally glance at the bulletin boards is on their way in to work and during lunch hours, which affords employees comparatively little exposure to the messages which the Lodges would like to convey. In my opinion bulletin boards fall far short of constituting an adequate medium of communications with the employees as a whole.

With respect to the Lodges' use of the mails to communicate with employees, at best this enables the Lodges

to communicate with members only, since the Lodges do not have the addresses of the nonmembers. As found above, for some time the Respondent has been furnishing the Lodges with copies of employment authorization forms called "Put-on" slips. These forms as originally filled out contain the names and addresses of all newly hired employees. But on the slips furnished the Lodges the addresses of the employees are blocked out. This practice originally arose under the stipulation entered into in the District Court proceeding before Judge Clarie. Consequently, the mails are of no assistance whatever insofar as communicating with nonmembers is concerned.

Even with respect to members, the mails are not a completely satisfactory means of reaching them, since the Lodges have no effective means of keeping their members addresses up to date. Quite frequently mail addressed to members is returned to the Lodges because the addressees have moved. The Respondent requires that all of its employees report changes of address to it and had a special form for this purpose. Thus the furnishing of addresses of all employees to the Lodges, as requested by them, would enable them to reach not only nonmembers, but also more members than they are presently reaching.

Finally the Respondent asserts that the Lodge can communicate with their constituents through their stewards. It points out that at the East Hartford plant there are about 500 stewards, including almost 100 shop stewards who are paid for handling grievances. It is true, as found above, that the 85-100 shop stewards are allowed up to 2 hours pay per week for handling grievances. The General Counsel replied that even 100 stewards for 17,000 employees provides too thin coverage and he points to various other factors discussed hereinabove, which limit the ability of the stewards to communicate with employees, including the unavailability or inaccessability of stewards in certain departments on some shifts and the Respondent's strict enforcement of non-solicitation rules and contract provi-

sions which effectively prohibit any discussion of union business during working hours. Considering all the factors discussed above, I conclude that while the stewards serve as one channel of communications with employees, they are unable to reach more than a small fraction of the employees in the plant.

In my opinion, when measured against the effectiveness of direct mailings to the home addresses of unit employees, none of the methods currently used by the Lodges of communicating with employees, either singly or in combination, furnish an adequate means of reaching all unit employees, both members of the Lodges and nonmembers.

B. Conclusions

1. The Lodges' status as exclusive bargaining representatives of the employees in their respective bargaining units

Before reaching the principal question in this case—whether the Respondent violated its obligations under Section 8(a)(5) of the Act in refusing to furnish the Lodges with lists of addresses of all the employees in the various bargaining units here involved—the threshold question of the Lodges' status as exclusive bargaining representatives so as to be entitled to request the lists of addresses must first be disposed of, that is, with the exception of the majority status of Lodge 1746A. Lodge 1746A's status as the exclusive bargaining representative of the employees at the Southington plant has not been questioned by the Respondent in this proceeding or before.

I have found that by the time the negotiations were concluded on November 30, 1968, for the new 3-year contracts between the Respondent and Lodges 1746A, 1746, and 700 covering the employees at the Respondent's plants in the Pratt & Whitney division, East Hartford and Manchester, Southington and Middletown, the Respondent had in its possession current dues-checkoff authorizations signed by

a majority of the employees in each of these plants. I have further found that months before the conclusions of the negotiations between the Respondent and Lodge 743 in April 1969 covering the employees at the Windsor Locks and Building # 3 plants in the Hamilton Standard Division, the Respondent had in its possession current dues-checkoff authorizations signed by a majority of the employees at each of these plants. In view of my finding that the Lodges' request for the addresses of unit employees was a continuing request, the foregoing evidence concerning the extent to which employees had signed checkoff authorizations would normally be conclusive of the Lodges' status as exclusive bargaining representative of all the employees in all six bargaining units at all times pertinent in this case.

However, the Respondent contends that the dues checkoff authorizations relied upon by the Lodges as establishing their majority status cannot be regarded as having been voluntarily executed in view of the assistance allegedly conferred upon the Lodges by the Respondent by its recognizing and entering into a collective-bargaining contract with the Lodges in the negotiations begun in 1965 and by its similar action in the negotiations begun in 1968. According to the Respondent, it granted recognition involuntarily on both occasions. The first time, so the Respondent asserts, it accorded recognition to Lodges 1746 and 743 as a result of the entry by the District Court, at the request of the Board, of an order under Section 10(j) of the Act requiring the Respondent to recognize and bargain collectively with these Lodges. (This order, as found above, was issued in aid of the pending unfair labor practice proceeding based upon the Respondent's withdrawal of recognition from Lodges 1746 and 743 on March 11, 1966.) On the second occasion, in 1968 negotiations, the Respondent says that it acted under the compulsion of the Board's own bargaining order entered on November 27, 1967, which was

entered in the proceeding based on the Respondent's March 11, withdrawal of recognition. The Respondent urges that since the Court of Appeals for the District of Columbia Circuit in its May 29, 1969, decision set aside the Board's order of November 27, 1967, its grant of recognition to the Lodges in the 1966 and 1968 negotiations was improper, that the Lodges were unlawfully assisted by these coerced grants of recognition, and that for this reason the dues checkoff authorizations obtained by the Lodges in their 1968 membership drive cannot be regarded as having been executed voluntarily.

While it is fair to state that the Respondent's grant of recognition to the Lodges in the negotiations beginning in 1966 was attributable to the compulsion of the District Court's order, it is not reasonable, in my opinion, to attribute the Respondent's recognition of the Lodges in the negotiations beginning in 1968 to the Board's order of November 27, 1967.

The Lodges had been carrying on a membership drive all during 1968. The number of dues checkoff authorizations turned over to the Respondent steadily increased in all plants as to which the Respondent raises a question concerning majority status from approximately 20 percent of the employees in January 1968 to over 50 percent in December 1968.

As found above, by the time the negotiations with Lodge 743 commenced in March 1969, the Respondent for several months had been checking off union dues from the wages of a majority of the employees at both the Windsor Locks and Building # 3 plants. When Lodge 743 inquired at the start of these negotiations whether the Respondent was challenging its majority status, the Respondent replied in the negative.

While the Respondent at the outset of the negotiations with Lodges 1746 and 700 in November 1968 challenged their majority status, after the Lodges offered additional

dues-checkoff authorizations to prove their majority status, and offered to submit to a Board conducted election if the Respondent did not regard the checkoff authorizations as sufficient proof (an offer which the Respondent declined), the Respondent entered into comprehensive negotiations for new contracts.[5]

In my opinion it was knowledge of the Lodges' steadily increasing strength among the employees at all the plants here involved, as evidenced by the dues-checkoff authorizations in its hands, which impelled the Respondent to enter into the negotiations beginning in 1968, rather than any compulsion flowing from the Board's order of November 27, 1967. This evidence of the Lodges' majority status was of a kind which the Respondent was entitled to accept and act upon.

The new contracts ultimately entered into by Respondent and the Lodges were not mere extensions of the previous contracts. Portions of these contracts were substantially rewritten and new benefits not previously accorded the employees were granted by the Respondent. The new contracts did not include the "savings clause" formerly contained in Article XIII of the previous contracts giving the Respondent the option of terminating the contracts upon 10 days notice if the Court of Appeals set aside the Board's order of November 27, 1967, although the Respondent up until the very end of the negotiations had insisted that any new contracts should also contain the "savings clause."

The Respondent has treated the new contracts which it had entered into with the Lodges as being in full force

---

[5] The Respondent did not raise as a barrier to the negotiations the pending proceedings in the Court of Appeals for the District of Columbia for the District of Columbia Circuit in which it was seeking the reversal of the Board's order of November 27, 1969, although it had reason to anticipate that the Court's decision would be forthcoming in the near future. (The cause had been argued on October 15, 1968).

and effect until the time of the filing of its answer to the complaint herein on July 11, 1969, when the Respondent for the first time raised a question concerning any aspect of the current contracts with the Lodges. Even in this proceeding the Respondent has challenged only the binding effect upon it of the exclusive recognition clauses. It relies on the Court of Appeals decision handed down on May 29, 1969, setting aside the Board's order of November 27, 1967, as the basis for its action in this regard. This court decision is discussed more fully below.

In all other respects, the Respondent's position is, as I understand it, that the contracts are valid and enforceable. At no time has the Respondent taken any steps, or attempted to take any steps to terminate the contracts as a whole. On the contrary, as late as May 2, 1969, when the Respondent filed its appeal from the Regional Director's refusal to issue a complaint upon its charge, alleging that Lodge 1746 had refused to bargain collectively with it in violation of Section 8(b)(3) of the Act, the Respondent was seeking to hold Lodge 1746 to the bargaining obligations which it assumed in entering into the 1968 contract.

To summarize, the Respondent recognized and entered into the negotiations for new contracts after having received from the employees in the units involved a steadily increasing number of dues-checkoff authorizations. By the time the agreements were reached the Respondent had in its possession dues-checkoff authorizations from a majority of the employees in each of the appropriate units here involved. The Respondent did not raise the Court of Appeals proceeding in which it was attacking the Board's order of November 27, 1967, as a barrier to the negotiations. The new contracts arrived and contained substantial revisions of the old contracts and offered the employees new benefits. In the new contracts, the Respondent retreated from its prior position that the "savings clause" must be included, and consented to the inclusion of an un-

conditional exclusive recognition clause. Since the signing of the new contracts the Respondent treated them as being valid and subsisting contracts, and still does, except that it urges that the exclusive recognition clauses may not be relied upon by the Lodges as establishing their majority status.

In view of all these facts I conclude that the Board's order of November 27, 1967, was not a factor of any significance in the Respondent's decision to go ahead with the 1968 negotiations and that the Respondent must be deemed to have acted upon its own responsibility in entering into these negotiations and in concluding the new contracts with the Lodges. This being true, the Respondent cannot be heard to say that recognition of the Lodges in 1968 and 1969 was granted under the improper compulsion of the Board's order of November 27, 1967, and that the assistance to the Lodges resulting from this recognition interfered with the employees' free choice of bargaining representatives. To hold otherwise on the facts of this case would be the essence of disorderly administration of the collective bargaining provisions of the Act. If the Respondent had any question in its mind about whether the employees had voluntarily executed the checkoff authorizations which had been turned over to it by the Lodges, and which it was then honoring, the time to raise such questions was before commencing the negotiations, not after these difficult and time consumming negotiations were concluded and the contracts enforced by all parties for some months. To permit the Respondent to raise the question of the voluntary nature of execution of the checkoff authorizations at this late date would be to sanction a most flagrant breach of the duty to bargain collectively in good faith.

The Respondent is mistaken, in my opinion, in relying upon the Court of Appeals decision of May 29, 1969, setting aside the Board's order of November 27, 1967, as justifying its challenge in this proceeding of the Lodges' majority

status. The Court of Appeals held that when the Respondent withdrew recognition from Lodges 1746 and 743, after the collapse of the negotiations in March 1966, it had reasonable grounds for doubting the Lodges' majority status and had acted in good faith, and that consequently the Board had been in error in finding an illegal refusal to bargain on this occasion and in issuing a bargaining order to remedy this alleged unfair labor practice. This decision with respect to alleged March 1966 unfair labor practices, which incidentally does not constitute a holding that Lodges 1746 and 743 in fact lacked majority status in March 1966, has no bearing on the Lodges' majority status in October 1968 and thereafter. The Lodges' claim of majority status at this time was based upon newly obtained dues-checkoff authorizations which were turned over to the Respondent during these and the preceding months. As stated above, employers are entitled to rely upon such evidence of majority status in determining whether or not to grant recognition. The Court of Appeals decision does not in my opinion warrant the Respondent's belated challenge of the Lodges' majority status.

I conclude that each Lodge acquired majority status at least by the last day of the month during which the total number of dues-checkoff authorizations furnished the Respondent by the Lodge reached a number in excess of 50 percent of the employees in the unit. The Respondent's records show and I find these dates to be as follows:

Lodge 1746, East Hartford and Manchester units, November 30, 1968.

Lodge 700, Middletown unit, October 31, 1968.

Lodge 743, Windsor Locks unit, November 30, 1968.

Lodge 743, Building #3 unit, December 31, 1968.

As stated above, there is no question in this case about Lodge 1746A's majority status in the Southington unit at any time pertinent herein.

2. The Respondent's obligation under Section 8(a)(5) of the Act to furnish the Lodges, as the exclusive bargaining representatives of the employees in the respective collective bargaining units, with the addresses of all unit employees

Prudential Insurance Co. v. *N.L.R.B.*, 412 F. 2d 77 (C.A. 6), cert. denied November 17, 1969, —— U.S. ——, and *Standard Oil Co. of California* v. *N.L.R.B.*, 399 F. 2d 639 (C.A. 9), both involve the same question as is presented in this case, i.e., whether an employer is required to comply with a union's request for a list of the names and addresses of all the employees in a bargaining unit of which the union is the exclusive bargaining representative. Both Courts concluded, in the circumstances there presented, that the obligations of employers under Section 8(a)(5) of the Act include the duty to furnish such address information upon request to the exclusive bargaining representatives of their employees. More recent decisions of the Board to the same effect are *Southern Counties Gas Co.*, 174 NLRB No. 11, and *General Electric Co.*, 176 NLRB No. 84. The validity of a Board direction to an employer to furnish employees' names and addresses in an election context has been upheld by the Supreme Court. *N.L.R.B.* v. *Wyman-Gordon Co.*, 394 U.S. 759, 767. See also *J. P. Stevens & Co., Inc.* v. *N.L.R.B.*, decided October 3, 1969 (C.A. 5), 72 LRRM 2433, 2438.

The Sixth Circuit in *Prudential* after referring to the general obligation of employers "to provide the employees' statutory bargaining representative with information that is necessary and relevant to the proper performance of its duties" and citing "wage data" as an example of a type of information which is "presumptively relevant" to the proper performance of a bargaining agent's duties, stated with respect to the address information sought in that case, as follows (412 F. 2d at 84):

The kind of information requested by the Union in this case has an even more fundamental relevance than that considered presumptively relevant. The latter is needed by the union in order to bargain intelligently on specific issues of concern to the employees. But data without which a union cannot even communicate with employees whom it represents is, by its very nature, fundamental to the entire expanse of a unions' relationship with the employees. In this instance it is urgent so that the exclusive bargaining representative of the employees may perform its broad range of statutory duties in a truly representative fashion and in harmony with the employees' desires and interests. Because this information is therefore so basically related to the proper performance of the unions' statutory duties we believe any special showing of specific relevance would be superfluous.

The facts of the instant case are similar to those of both the *Prudential* and *Standard Oil* cases, and in my opinion they more closely parallel those in the *Standard Oil* case. In the *Standard Oil* case the Court, sustaining the Board, held that the exclusive bargaining representative of employees has a statutory duty fairly to represent all of the employees in the bargaining unit, nonunion employees as well as union members. Fulfillment of the statutory duty, the Court stated, requires that the bargaining representative have effective means of communicating with the beneficiaries of its statutory obligation, including nonunion employees, with respect to such matters as "their preferences and priorities in contract negotiations, their experience and recommendations with respect to the operation of the grievance-arbitration machinery, and their thoughts on the wisdom of striking over a particular issue" (399 F. 2d, at 641). The Court in *Standard Oil*, adopting the reasoning of the Board, held that in view of the relatively low union membership in the unit, the absence of a union-security clause in the collective-bargaining agreement, the

residential dispersion of unit employees over a wide area, the apparent ineffectiveness of the steward system, the lack of adequate exposure of unit employees to union bulletin boards, and the inefficiency of handbilling efforts, that the union there involved could not in any effective manner communicate with the beneficiaries of its statutory obligation. In these circumstances, the Court upheld the Board's conclusion that the furnishing of the employee address list was relevant to the union's performance of its responsibilities in collective bargaining and contract administration and required that the employer furnish the requested list of addresses.

The parallel between the facts of the *Standard Oil* case and this case is apparent. Thus, here as in the *Standard Oil* case the Lodges had a relatively low membership in the unit, having as members only a little more than 50 percent of the employees in each of the units, leaving a very substantial minority of nonmembers to whom the Lodges owed the duty of fair representation. In this case also the collective bargaining contract did not contain a union security clause. The employees' residences in this case were scattered over a considerably wider area than in the *Standard Oil* case, rendering personal contacts with employees at their homes almost an impossibility from a practical standpoint. Here, as in the *Standard Oil* case, the alternative means of communicating with employees open to the Lodges were not adequate. I have found that neither the Lodges' handbilling efforts, its use of the Respondent's bulletin boards, the activities of its stewards or its mailings to members, either singly or in combination, constituted an effective means of communicating with the employees as a whole, nonmembers as well as members of the Lodges.

The mechanics of the furnishing of the Lodges with the requested list of addresses present no serious problem. The Respondent has mechanical addressing equipment for all

its plants. As found above, in November 1968, the Respondent, in an effort to counter the Lodges' request for addresses, voluntarily offered the use of its mailing facilities to the Lodges for certain limited types of mailings. Lodges 1746, 1746A and 700 accepted this offer on one occasion. In one respect, in connection with the Respondent's furnishing the Lodges with information concerning newly hired employees, it would simplify matters for the Respondent to furnish addresses, since it would enable the Respondent to stop blocking out the addresses on the "Put-on" forms.

The Respondent seeks to justify its action in refusing the lists of addresses requested by the Lodges on two main grounds. I have dealt with and rejected the first contention—that the various methods of communicating with employees which have been utilized by the Lodges in the past together with the additional methods offered by the Respondent and declined by the Lodges constitute an adequate means of communicating with all the employees—in connection with my discussion of the facts. There remains the Respondent's second contention that it is entitled to withhold the addresses in order to protect the employees' right of privacy at their homes, particularly in view of the violence which occurred at the homes of nonstrikers during the 1960 strike.

The Charging Party contends that, vis-a-vis the statutory collective bargaining representative, address information is no more entitled to be kept private than wage information; that an employer is no more permitted in one case than the other to assert employees' alleged individual interest in privacy to justify nonperformance of its statutory obligation to furnish data necessary to the carrying out of the bargaining agent's statutory functions. Logic, in my opinion, supports the Charging Party's position. In the *Prudential* case in the Sixth Circuit the employer's policy with respect to furnishing employee addresses was

identical with Respondent's in this case. The Sixth Circuit's decision requiring the furnishing of address information answers the Respondent's "privacy" contention in the typical situation. See also *British Auto Parts, Inc.* v. *N.L.R.B.*, 405 F. 2d 1182, 1183 (C.A. 9); *N.L.R.B.* v. *Hanes Hosiery Division, Hanes Corp.*, 384 F. 2d 188, 191 (C.A. 4), cert. denied, 390 U.S. 950; *N.L.R.B.* v. *Beech-Nut Life Savers, Inc.*, 274 F. Supp. 432, 437 (S.D.N.Y.), aff'd 406 F. 2d 253, 259 (C.A. 2); *N.L.R.B.* v. *Wyman-Gordon Co.*, 394 U.S. 759, 766.

The question remains whether the violence which occurred at the homes of nonstrikers during the 1960 strike in which members or representatives of Lodge 1746 and 743 allegedly engaged justifies a different outcome in this case. Assuming that this violence can be properly attributed to Lodges 1746 and 743, I question whether, in a reasonable balancing of the competing considerations, these acts 8 years before should be regarded as calling for the indefinite suspension of the Respondent's statutory obligation to furnish information which is relevant to the bargaining agent's performance of its statutory fuctions. There is no evidence in this case of any present threat by agents of Lodges 1746 and 743 to engage in acts of violence at the homes of nonunion employees. Though the Lodges may have misconducted themselves in the past, they have "a locus penitentiae," and the Respondent is not thereby relieved indefinitely of its obligation to furnish relevant information. Cf. *N.L.R.B.* v. *Remington Rand, Inc.*, 94 F. 2d 862, 872-873 (C.A. 2), cert. denied, 304 U.S. 576. See also *N.L.R.B.* v. *Duncan Foundry & Machine Works*, decided January 16, 1968 (C.A. 7), 67 LRRM 2516, 2517, and *Howell Refining Co.* v. *N.L.R.B.*, 400 F. 2d 213, 216 (C.A. 5), in which the production of employees' names and addresses was required under the Board's *Excelsior* rule [6] despite evidence of some contemporary violence. And see

[6] *Excelsior Underwear Co. Inc.*, 156 NLRB 1236.

N.L.R.B. v. *Q-T Shoe Manufacturing Co.*, 409 F. 2d 1247, 1250 (C.A. 3); *N.L.R.B.* v. *Delaware Valley Armaments, Inc.*, decided October 23, 1969 (D.C. N.J.) Cf. *Sign and Pictorial Union Local 1175* v. *N.L.R.B.*, decided September 23, 1969 (C.A.D.C.), 72 LRRM 2274, 2281-2282.

Accordingly, I conclude that the violence allegedly engaged in by agents of Lodges 1746 and 743 in 1960 does not justify a different result in this case, and that the Respondent was obliged under Section 8(a)(5) of the Act to furnish the address information sought by the Lodges.

3. The Respondent's violation of Section 8(a)(5) and (1) of the Act

The Lodges' requests for the lists of addresses of the employees in the various bargaining units which gave rise to the instant proceeding were made by the Lodges in letters to the Respondent dated September 19, 1968 and October 10, 1968. These requests were in effect renewed in the bargaining negotiations between Lodges 1746 and 700 and the Respondent on November 29 and 30. (As found above, earlier requests for the addresses of unit employees had been made in 1964 and 1965.) Under all the circumstances I find that the Lodges' requests for the addresses of unit employees were of a continuing nature.

I have found that Lodge 1746 achieved majority status in the East Hartford and Manchester units by November 30, 1968, that Lodge 700 reached such status in the Middletown unit by October 30, 1968, and that Lodge 743 acquired its majority in the Windsor Locks unit by November 30, 1968 and in the Building #3 unit by December 31, 1968. There never has been any question in this case about Lodge 1746A's status in the Southington unit. I have further found that under the circumstances of this case the Respondent was obliged under Section 8(a)(5) of the Act to furnish the address information requested. It follows

that the Respondent's continuing refusals, after having been given proof of each Lodge's majority status, to furnish the requested address information violated Section 8(a)(5) and (1) of the Act.

With respect to Lodges 1746, 700 and 743, the violations occurred on the dates set forth in the preceding paragraph. Regarding Lodge 1746A, the Respondent's violation occurred commencing on September 30, 1968, when the Respondent wrote District 91 its first letter refusing to furnish the addresses of unit employees.

Conclusions of Law

1. All production and maintenance employees of the United Aircraft Corporation, Pratt & Whitney Aircraft Division, at the East Hartford plant (including the DE Lab and the Willgoos Lab), including inspectors, crib attendants, material handlers, factory clerks and working leaders, but excluding timekeepers, engineering and technical employees, laboratory technicians, foremen's clerks, salaried office and clerical employees, medical department employees, first-aid employees, plant protection employees, executives, plant superintendents, division superintendents, general foremen, foremen, assistant foremen, group supervisors, watch engineers, and all other supervisors as defined in the National Labor Relations Act, as amended, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

2. All production and maintenance employees of the United Aircraft Corporation, Pratt & Whitney Aircraft Division, at its Manchester, Connecticut plant (Cheney Mills Buildings 1, 2, 3, 19, the Finishing Mill, and the Weaving Mill) including inspectors, crib attendants, material handlers, factory clerks and working leaders, but excluding all timekeepers, professional employees, engineering and technical employees, laboratory technicians,

foremen's clerks, office and clerical employees, medical department employees, first-aid employees, plant production employees, executives, plant superintendents, division superintendents, general foremen, foremen, assistant foremen, group supervisors, watch engineers, and all other supervisors as defined in the National Labor Relations Act, as amended, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

3. At all times on and after November 30, 1968, Lodge 1746, International Association of Machinists and Aerospace Workers, AFL-CIO, has been the duly designated exclusive collective-bargaining representative of the employees in the units described in paragraph 1 and 2 above.

4. All production and maintenance employees of the United Aircraft Corporation, Pratt & Whitney Division, at the Middletown Connecticut plant, including inspectors, crib attendants, material handlers and working leaders, but excluding all timekeepers, engineering and technical employees, professional employees, laboratory technicans, foremen's clerks, salaried office and salaried clerical employees, medical employees, first-aid employees, plant protection employees, executives, plant superintendents, division superintendents, general foremen, foremen, assistant foremen, group supervisors, watch engineers, and all other supervisors, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

5. At all times on and after October 31, 1968, Lodge 700, International Association of Machinists and Aerospace Workers, AFL-CIO, has been the duly designated exclusive collective-bargaining representative of the employees in the unit described in paragraph 4 above.

6. All production and maintenance employees of United Aircraft Corporation, Pratt & Whitney Division, at its Southington, Connecticut, plant, including inspectors, crib

attendants, material handlers, factory clerks and working leaders, but excluding timekeepers, engineering and technical employees, apprentices, trainees, laboratory technicians, foremen's clerks, salaried office and clerical employees, medical department employees, first-aid employees, plant protection employees, executives, plant superintendents, division superintendents, general foremen, foremen, assistant foremen, group supervisors, watch engineers, and all other supervisors, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

7. At all times on and after September 19, 1968, Lodge 1746A, International Association of Machinists and Aerospace Workers, AFL-CIO, has been the duly designated exclusive collective-bargaining representative of the employees in the unit described in paragraph 6 above.

8. All production and maintenance employees of the United Aircraft Corporation, Hamilton Standard Division, at the Windsor Locks plant, including working leaders and all hourly-rated technicians in the chemical, rubber, metallurgical, vibration, and electronics laboratories, but excluding executives, professional employees, salaried technicians in the Engineering Department, foremen's clerks who have access to confidential information, draftsmen, plant protection employees, medical department employees, salaried office and salaried clerical employees, outside servicemen, truckdrivers, watch engineers, group supervisors and all other supervisors as defined in the National Labor Relations Act, as amended, constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

9. At all times on and after November 30, 1968, Lodge 743, International Association of Machinists and Aerospace Workers, AFL-CIO, has been the duly designated exclusive collective-bargaining representative of the employees in the unit described in paragraph 8 above.

10. All production and maintenance employees of United Aircraft Corporation, Hamilton Standard Division, at the Building #3 plant, Windsor Locks, including working leaders and hourly-rated technicians in the electronics laboratory, but excluding executives, professional employees, salaried technicians in the Engineering Department, foremen's clerks who have access to confidential information, draftsmen, plant protection employees, medical department employees, salaried office and salaried factory clerical employees, timekeepers, outside servicement, truck-drivers, watch engineers, group supervisors and all other supervisory employees as defined in the National Labor Relations Act, as amended, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

11. At all times on and after December 31, 1968, Lodge 743, International Association of Machinists and Aerospace Workers, AFL-CIO, had been the duly designated exclusive collective-bargaining representative of the employees in the unit described in paragraph 10 above.

12. By denying the requests of the Lodges for the addresses of all of the employees in the respective bargaining units on and after the dates specified in paragraphs 3, 5, 7, 9 and 11 above, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(5) and (1) and 2(6) and (7) of the Act.

The Remedy

Having found that the Respondent, in violation of its duty under Section 8(a)(5) of the Act, refused to furnish the Lodges with the home addresses of all the employees in the units represented by them, my recommended order will direct the Respondent promptly to furnish each of the Lodges with the home addresses of all the employees in their respective collective-bargaining units. My recom-

mended order will further direct the Respondent to bargain collectively with the Lodges, upon request, concerning the manner and form in which such information shall be furnished the Lodges in the future and the intervals at which such information shall be brought up to date.

Upon the foregoing findings and conclusions and the entire record, and pursuant to Section 10(c) of the Act, there is hereby issued the following:

Recommended Order

The Respondent United Aircraft Corporation (Pratt & Whitney and Hamilton Standard Divisions), its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Refusing to furnish Lodges 1746, 1746A, 700 and 743, International Association of Machinists and Aerospace Workers, AFL-CIO, with the home addresses of all the employees in their respective collective-bargaining units.

2. Take the following affirmative action which it is found will effectuate the policies of the Act:

(a) Promptly furnish each of the Lodges, Lodges 1746, 1746A, 700 and 743, International Association of Machinists and Aerospace Workers, AFL-CIO, with the home addresses of all of the employees in their respective collective-bargaining units.

(b) Upon request, bargain collectively with each of the Lodges concerning the manner and form in which the home addresses of the unit employees will be furnished the Lodges in the future and the intervals at which such information shall be brought up to date.

(c) Post at its East Hartford, Manchester, Middletown, Southington, Windsor Locks and Building #3, Windsor Locks, plants copies of the attached notice marked "Ap-

pendix."[7] Copies of said notice, on forms provided by the Regional Director for Region 1, after being duly signed by an authorized representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 1, in writing, within 20 days from the receipt of this Decision, what steps have been taken to comply herewith.[8]

Dated at Washington, D. C.

OWSLEY VOSE
Owsley Vose
Trial Examiner

---

[8] In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps Respondent has taken to comply herewith."

[7] In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, recommendations, and Recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order, and all objections thereto shall be deemed waived for all purposes. In the event that the Board's Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT in the future refuse the requests of Lodges 1746, 1746A, 700 and 743 International Association of Machinists and Aerospace Workers, AFL-CIO, for the home addresses of all of the employees in their respective collective-bargaining units.

WE WILL promptly furnish Lodge 1746, Lodge 1746A, Lodge 700 and Lodge 743, International Association of Machinists and Aerospace Workers, AFL-CIO, with the home addresses of all of the employees in their respective collective-bargaining units.

WE WILL, upon request, bargain collectively with each of the Lodges concerning the manner and form in which the home addresses of the unit employees will be furnished the Lodges in the future and the intervals at which such information shall be brought up to date.

.....
(Employer)

Dated ..... By .....
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this Notice or compliance with its provisions, may be directed to the Board's Office, 20th Floor John F. Kennedy Federal Building, Cambridge & New Sudbury Sts., Boston, Mass. 02203 (Tel. A.C. 617, 223-3300).

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 1258

UNITED AIRCRAFT CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

The issue upon which certiorari is sought (Pet. 2) is whether an employer violates its bargaining obligation under the National Labor Relations Act when it declines to furnish the union [1] with the names and home addresses of its employees where it is alleged (1) that alternative methods of communication with employees exist (2) that the employer had a good faith doubt of the union's representative status when the request was made and (3) there was a past history

[1] Here, Lodges 1746, 1746A, 700, and 743, affiliated with District 91 of the International Association of Machinists and Aerospace Workers, AFL–CIO.

of union violence at the homes of nonstriking employees. These factual assertions are, however, refuted by the record.

The Board found (Pet. App. 19a–20a) that because of the inadequacy of other available methods, singly or in combination, direct mailing to the homes of the employees was the only sufficient method the Union could employ to reach the member as well as nonmember employees (Pet. App. 43a–50a); that while the Company may have had reasonable grounds to doubt the Union's majority status in 1966, and signed contracts with it in March 1966 under the compulsion of a district court order, the compulsion had dissipated at the time the Company had entered into the 1968 and 1969 contracts, which it did without raising any objection to the Union's showing of majority status (Pet. App. 50a–56a); and that violence which had occurred at the homes of nonstriking employees in 1960 could not justify the Company's instant refusal to furnish the information, since there was no evidence of any present threat by the Union or of any of its agents to engage in any similar misconduct (Pet. App. 61a).

After an extensive review, the court of appeals (Pet. App. 2a–18a) enforced the Board's order, determining that each of these findings was supported by substantial evidence in the record. Under familiar principles, further review by this Court of the correctness of these factual conclusions is not warranted. *Universal Camera Corp.* v. *National Labor Relations Board,* 340 U.S. 474, 490–491.[2]

[2] It is settled that the duty to bargain imposed by the National Labor Relations Act requires the employer to furnish the em-

The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

ARNOLD ORDMAN,
General Counsel,
National Labor Relations Board.

FEBRUARY 1971.

---

ployees' bargaining representative with information that is necessary to the proper performance of the latter's duties. See, *National Labor Relations Board* v. *Acme Industrial Co.*, 385 U.S. 432, 435–436. A list of the employees names and addresses may in appropriate circumstances—as here—constitute such necessary information. *Prudential Insurance Co. of America* v. *National Labor Relations Board*, 412 F. 2d 77 (C.A. 2), certiorari denied, 396 U.S. 928; *Standard Oil Co. of California, W. O., Inc.* v. *National Labor Relations Board*, 399 F. 2d 639 (C.A. 9). There is no merit to petitioner's contention (Pet. 13) that the court of appeals applied a "*per se* rule" in reaching that conclusion in this case. On the contrary, the court concluded that the holdings in *Prudential* and *Standard Oil* were applicable only after careful analysis of these decisions, finding specifically that the facts in this case were "very similar to those" in *Standard Oil* (see Pet. App. 13a, n. 2; Pet. App. 17a–18a).

U.S. GOVERNMENT PRINTING OFFICE: 1971

LIBRARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
SEP 3 1971
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1258

UNITED AIRCRAFT CORPORATION, *Petitioner*,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*,

DISTRICT 91, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, *Respondent*.

MOTION OF RESPONDENT DISTRICT 91 TO ADVANCE DISPOSITION OF PETITION FOR WRIT OF CERTIORARI

AND

MEMORANDUM FOR RESPONDENT DISTRICT 91 IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

PLATO E. PAPPS
Machinists Building
Washington, D. C. 20036

MOZART G. RATNER
818 – 18th Street, N. W.
Washington, D. C. 20006

Attorneys for Respondent
District 91, IAMAW

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1258

UNITED AIRCRAFT CORPORATION, *Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent,*

DISTRICT 91, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, *Respondent.*

MOTION OF RESPONDENT DISTRICT 91 TO ADVANCE DISPOSITION OF PETITION FOR WRIT OF CERTIORARI

Respondent, District 91, International Association of Machinists and Aerospace Workers, AFL-CIO,[1] re-

[1] District 91 was a party below, having "intervened on the side of the Board" (App. 2a, 3a, 5a), and, pursuant to Rule 21(c) of the Rules of this Court, is therefore a party respondent here. The copy of the petition mailed to counsel for District 91 was misaddressed, returned to the sender, and ultimately hand delivered to his office on January 28, 1971. (App. A, *infra*).

spectfully moves that this Court advance disposition of the petition for writ of certiorari for the following reasons:

On December 23, 1970, at petitioner's request, the court below entered an order staying its mandate pending disposition of the instant petition (Pet. 2). The mandate requires petitioner forthwith to furnish the Local Unions represented by District 91 (App. 3a) a list of the names and addresses of all bargaining unit employees (App. 67a, 20a, 18a). Every day said list is withheld irreparably injures District 91, its local affiliates and the employees they represent, inasmuch as it disables them from properly performing their statutory functions, and thereby frustrates the principal policy and purpose of the entire Act.

As the court below explicitly found (App. 13a), it has been perfectly clear, at least since 1968, that where, as here, the "names and addresses of unit employees [are] needed by the Union to assist it in properly performing its collective bargaining duties," the employer is obligated to furnish such a list upon request. *Standard Oil Company*, 166 NLRB 343-346, enf'd, 389 F. 2d 639, 641 (9 Cir., August 20, 1968). In *NLRB* v. *Wyman-Gordon Co.*, 394 U.S. 759, 767 (1969), this Court upheld the power of the Board to order "disclosure of employees' names and addresses," for the express purpose of "allowing unions the right of access to employees that management already possesses."

Expedited disposition of this petition is necessary not only in "furtherance of national labor policy" but also because "important considerations of judicial administration are involved." *International Union of E. R. & M. W., AFL-CIO* v. *NLRB*, 426 F. 2d 1243,

1249-1250 (App. D.C.), cert. denied, sub nom. *Fibre Products, Inc. v. Electrical, Radio & Machine Workers*, No. 654, this Term, —— U.S. ——, 39 L.W. 3246. As demonstrated in our annexed memorandum in opposition, the petition for certiorari is plainly frivolous, and yet, unless its denial is expedited, petitioner will have unjustly profited and both respondents and the public interest will have unjustly suffered from substantial delay.

For the foregoing reasons, this motion should be granted.

Respectfully submitted,

PLATO E. PAPPS
Machinists Building
Washington, D. C. 20006

MOZART G. RATNER
818 – 18th Street, N. W.
Washington, D. C. 20006

Attorneys for Respondent
District 91, IAMAW

February 2, 1971

Mozart G. Ratner, Esquire
1818 18th Street, N.W.
Washington, D.C.

APPENDIX A

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1258

UNITED AIRCRAFT CORPORATION, *Petitioner*,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent*,

DISTRICT 91, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, *Respondent*.

MEMORANDUM FOR RESPONDENT DISTRICT 91 IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The sole predicate of the petition is its assertion that requiring an employer to furnish names and addresses of bargaining unit employees "is in conflict with the judicial philosophy of this Court" which "does not give the Board a broad charter to attempt to equalize the respective economic powers of labor and management." (Pet. 11, 15, 18-19). The asserted philosophical conflict is plainly non-existent and its invention is a belated afterthought. Petitioner did not even suggest such a theory, or cite any of the cases it now invokes, to the Board or the court below. Even petitioner

concedes that the prohibition against "equalization" of economic weapons involves "a different context" (Pet. 15), than "allowing [bargaining agents] the right of access [to their employee constituents] that management already possesses." *NLRB* v. *Wyman-Gordon Co.*, 394 U.S. 759, 767. Denial of access is not the use of superior economic power to obtain a better contract; it is withholding information to frustrate performance of the Union's representative functions.

Petitioner necessarily concedes (App. 11-12), that there is only uniformity, not conflict, of decisions. Moreover, even the "question" it would present (Pet. 2-3), turns upon *reversing* findings of fact made by the Trial Examiner, adopted unanimously by the Board, and unanimously affirmed by the distinguished court below. Thus, the court below found (not "summarily" (Pet. 12), as petitioner would have it, but in elaborate detail), that the "alternate methods of Union communication" (Pet. 2), were "individually and collectively inadequate" (Pet. 12; App. 7a-8a, 14a-17a). It held that, *at the crucial time* (which petitioner ignores), petitioner did *not* have "a good faith doubt of the Union's representative status" (cf. Pet. 2, 17, App. 10a-12a). And it held that the ancient "history" petitioner recites (Pet. 2, 4-6, 18) is irrelevant because "there is substantial evidence to support [the] finding" that there is "little likelihood of a clear and present danger to the employees involved" (App. 16a).[1]

---

[1] The subsequent opinion on damages in the very state court case petitioner cites belies its present assertion (Pet. 18) (never previously made and wholly unsupported on this record), that no "employee who valued his own or his family's safety [would] publicly testify regarding his * * * fears of union misconduct." *United Aircraft Corp.* v. *Lodge 1746 and 743, District 91, IAM*, 70 LRRM 2577 (Conn. Sup. Ct., 1968).

CONCLUSION

For the foregoing reasons, the petition for certiorari should be denied forthwith.

Respectfully submitted,

PLATO E. PAPPS
Machinists Building
Washington, D. C. 20036

MOZART G. RATNER
818 - 18th Street, N. W.
Washington, D. C. 20006

Attorneys for Respondent
District 91, IAMAW

February 2, 1971